UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: December 23, 2014

Opposition No. 91218523

Oakhurst Industries, Inc. DBA Freund Baking Co.

v.

13th Ave Fish Market Inc. DBA Freund's Fish

Jennifer Krisp, Interlocutory Attorney:

Suspension

Proceedings are suspended pending disposition of opposer's December 1, 2014 motion to strike applicant's affirmative defenses. Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See* Trademark Rules 2.117(c) and 2.127(d).

The motion to strike will be decided in due course.

Extension

The Board notes applicant's consented motion, filed December 18, 2014, for a one-week extension of time in which to file its response to opposer's motion to strike.

In support of the consented motion, the parties state that applicant received opposer's motion to strike via First Class Mail on December 16, 2014,

and that applicant promptly sought and obtained opposer's consent for the requested extension.[1]

The Certificate of Service on opposer's motion attests to service thereof by First Class Mail on December 1, 2014, to what appears to be the correct name and address of counsel for applicant and the appointed firm. The parties do not state or offer a reason for applicant's receipt of the motion two full weeks after opposer mailed it.[2]

Nevertheless, for good cause shown, and in view of opposer's consent, applicant's motion is granted.

Accordingly, applicant's brief in response to opposer's motion to strike is now due December 29, 2014. Opposer's reply brief, if filed, shall be due by operation of Trademark Rule 2.127(a).

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[1] The Board clarifies that by operation of Trademark Rule 2.127(a), the due date for applicant's response to the motion to strike was originally December 21, 2014, not December 22, 2014 as stated in the consented motion. A filing on December 22, 2014 would have been deemed timely pursuant to Trademark Rule 2.196 inasmuch as December 21, 2014 is a Sunday.

[2] In the event that counsel for applicant has reason to know that the substantially delayed receipt of opposer's motion was due to a known or knowable issue, such as a problem with the U.S. Postal Service serving this address, with counsel's address of record, or with the processing of incoming mail, counsel is urged to address the matter(s) forthwith so as to avoid and future delays.

Given the occurrence that occasioned the motion to extend, and given that applicant's counsel's firm is located in a large building in New York City, the Board urges the parties to 1) verify that they have accurate electronic mail addresses for each other, and 2) enter into a written stipulation to exchange all future service copies of motions, papers and other Board filings by electronic mail, as provided for in Trademark Rule 2.119(b)(6). *See* TBMP § 113.05 (2013); *McDonald's Corp. v. Cambrige Overseas Development Inc.*, 106 USPQ2d 1339 (TTAB 2013). The parties may file said stipulation with the Board so as to clarify and complete the record.