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

Proceeding	91221837
Party	Plaintiff Bibiji Inderjit K Puri
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In Re Appl. Serial No.: **86432152**
For the mark: **BAD YOGI**
Published on: **April 7, 2015**

BIBIJI INDERJIT KAUR PURI
v.
BAD YOGI LLC

**OPPOSER BIBIJI INDERJIT KAUR PURI'S OPPOSITION TO
APPLICANT BAD YOGI LLC'S MOTION TO STRIKE OPPOSER'S
NOTICE OF OPPOSITION FOR IMPROPER SERVICE**

In response to the Motion to Strike filed by Applicant BAD YOGI LLC,
Opposer BIBIJI INDERJIT KAUR PURI ("Bibiji") hereby submits the following
response:

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I. INTRODUCTION

This case arises from Opposer Bibiji's assertion of the Yogi marks in connection with goods, including clothing and health-related goods, used in association with the YOGI word mark and other marks. Applicant's applicant was published for opposition on April 7, 2015. Opposer filed an Answer and had actual notice of the Notice of Opposition on May 6, 2015. Applicant Bad Yogi, LLC does not dispute that Opposer timely filed her Notice of Opposition before the Trademark Trial and Appeal Board (TTAB).

II. SERVICE WAS PROPER

The parties already had a prior email dialog on the subject of this Opposition prior to the filing of the Notice of Opposition, and thus there was no surprise as to the filing of the Notice of Opposition in this case. Applicant's counsel Rachel Feinman was notified by Opposer's counsel Michael Long of The Soni Law Firm by advance letter on April 23, 2015, to which Attorney Feinman responded on April 30, 2015. Declaration of Michael A. Long ("Long Decl."), ¶ 2.

Applicant tenuously argues service was "improper" because the mailing certificate accompanying Opposer's Notice of Opposition states "May 6, 2015" and the mailing label states "May 7, 2015." The case law cited is inapplicable to the facts here, for such alleged claim of the certificate as a "future promise to serve" is not asserted and thus the argument is moot and inapplicable to the facts of this case.

Specifically, the certificate is not shown by the moving party, Bad Yogi LLC, to be "invalid" as it claims. Opposer's counsel's law firm staff regularly use in the course of business the "Stamps.com" service which prints the next day's date after approximately 4:30 PM. Long Decl., ¶ 3. Thus, the certificate is not invalid and indeed was valid. The request was submitted for filing on May 6, 2015

sometime after 4:00 PM on May 6, 2015. Long Decl., ¶ 4. Herein, the instant label was printed after 4:30 PM on May 6, 2015, which, as explained to Applicant's counsel via letter date June 19, 2015, explains why the label was printed out as "May 7, 2015" instead of "May 6, 2015." Long Decl., ¶ 5. The certificate was instructed by Applicant's counsel to be deposited on May 6, 2015. Long Decl., ¶ 6. The mailing of Notice of Opposition was sent on May 6, 2015, not returned, and must be presumed sent on the date of the certificate. Long Decl., ¶ 7.

Alternatively, if the Board finds that the certificate was improper, Applicant has substantially complied with the notice requirement, and would constitute harmless error given BAD YOGI LLC's counsel's actual notice of the Notice of Opposition and the timely filing of its response. Even if the mailing had been performed on May 7, 2015, it would have still been timely served within the 30-day period. The fact of Opposer's filing of the notice on May 6, 2015, which Applicant does not contest, is fully consistent with Applicant's timely service.

Applicant has also failed to allege that any prejudice resulted from the difference in date on the printed mailing label. A showing of difference in date is ultimately inconsequential under these circumstances. Should the Board find that service was improper as to the Notice of Opposition, this would not negate the timely filing of Opposer's Notice of Opposition with the TTAB. Moreover, Applicant's counsel does not state that it did not receive the ESTTA email notice providing for such filing on May 6, 2015 upon the filing of the Notice of Opposition. Applicant therefore would be properly deemed to have actual notice unless it is shown that the emailed notice via ESTTA was somehow not received or a notice of "undeliverable" email was generated. Therefore, absent any such showing, Applicant cannot deny actual notice on this ground. Thus, service is not shown to be improper.

Accordingly, Applicant's Motion to Strike the Notice of Opposition for improper service must be DENIED.

III. CONCLUSION

Service of Opposer's notice was timely, or in the alternative one day difference in the mailing label constitutes harmless error or excusable neglect. No surprise resulted to the Applicant.

DATED: June 29, 2015

Respectfully submitted,
THE SONI LAW FIRM

/Michael A. Long/

Surjijt P. Soni

Michael A. Long

Attorneys for Opposer

BIBIJI INDERJIT KAUR PURI

DECLARATION OF MICHAEL A. LONG

I, Michael A. Long, declare:

1. I am an attorney with The Soni Law Firm, counsel of record for the BIBIJI INDERJIT KAUR PURI (“Bibiji”), the Opposer in the above-captioned matter. If called to testify I would and could testify competently as to the following facts which are within my personal knowledge.

2. I contacted Applicant’s counsel by advance letter on April 23, 2015 prior to filing the instant Notice of Opposition. Applicant’s counsel Rachel Feinman responded to my letter by email on April 30, 2015.

3. I understand that our firm’s staff at The Soni Law Firm regularly uses in the course of business the “Stamps.com” service which prints the next day’s date after approximately 4:30 PM.

4. I requested filing of the Notice of Opposition to our staff on May 6, 2015 sometime after 4:00 PM on May 6, 2015.

5. I understand that the mailing label was printed after 4:30 PM on May 6, 2015 which provides the necessary explanation as to why the label was printed out as “May 7, 2015” instead of “May 6, 2015.”

6. I instructed the filing to be deposited on May 6, 2015. The Notice of Opposition was mailed thereby, and not returned.

7. Applicant Bad Yogi, LLC’s counsel timely filed its answer, evincing its actual notice of Opposer’s Notice of Opposition. Applicant does not deny that it received actual notice thereof.

I declare the foregoing as true and correct under penalty of perjury under the laws of the United States.

DATED: June 29, 2015

/Michael A. Long/
Michael A. Long, Declarant

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER BIBIJI INDERJIT KAUR PURI'S OPPOSITION TO APPLICANT BAD YOGI LLC'S MOTION TO STRIKE OPPOSER'S NOTICE OF OPPOSITION FOR IMPROPER SERVICE; DECLARATION OF MICHAEL A. LONG** has been served on Counsel for Applicant by mailing said copy on the date undersigned via First Class Mail, postage prepaid to:

Rachel M. Feinman, Esq.
David Luikart, III, Esq.
HILL WARD HENDERSON
101 E KENNEDY BLVD STE 3700
TAMPA, FLORIDA 33602-5195

DATED: June 29, 2015

/s/ Cassandra Scardino
Cassandra Scardino