

SULLIVAN & CROMWELL LLP

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05-27-2003

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May 22, 2003

By First-Class Mail

Commissioner for Trademarks,
2900 Crystal Drive,
Arlington, Virginia 22202-3514.

Attention: Trademark Trial and Appeal Board

Re: Georgia Graham Jones v. Alison Holtzschue,
Cancellation No. 92040746

Dear Commissioner:

On behalf of Alison Holtzschue, I enclose her Motion To Extend Time To Respond To Motion For Summary Judgment in the above-referenced cancellation proceeding. A copy of the enclosed Motion is being served today on the Petitioner.

I would very much appreciate your date-stamping the enclosed additional copy of the Motion and returning it to me in the stamped self-addressed envelope provided.

Please telephone me at (202) 956-7685 with any questions regarding this matter.

Very truly yours,

Rita M. Carrier

Rita M. Carrier

(Enclosure)

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

- - - - -x
: Georgia Graham Jones, :
: Petitioner, :
: v. : Cancellation No. 92040746
: Alison Holtzschue, :
: Registrant. :
- - - - -x

03 JUN 11 AM 9:31
TRADEMARK TRIAL AND
APPEAL BOARD

MOTION TO EXTEND TIME TO RESPOND TO
MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, registrant Alison Holtzschue ("Registrant") moves the Trademark Trial and Appeal Board (the "Board") to extend the time in which Registrant may file a brief in opposition to Petitioner's Motion for Summary Judgment, served on April 17, 2003 (the "Motion").¹ Registrant's response to the Motion is currently due by May 22, 2003.² Registrant hereby respectfully requests that

¹ The Federal Rules of Civil Procedure govern inter partes cases before the Board "wherever applicable and appropriate," except as specifically otherwise provided. 37 C.F.R. § 2.116(a).

² The Trademark Rules of Practice state that "a brief in response to [a] motion for summary judgment shall be filed within 30 days from the date of service of the (continued ...)

the Board extend the time for Registrant to file a brief in opposition to the Motion. Registrant is simultaneously filing a Motion Pursuant To Rule 56(f) for denial of the Motion on the ground that Registrant has had no opportunity to conduct discovery on the claims on which Petitioner seeks summary judgment. In the event that the Board denies Registrant's Rule 56(f) Motion, Registrant requests that the Board grant Registrant sixty (60) days from the Board's decision to allow the parties fully to explore settlement before Registrant must respond to the Motion.

Where, as here, the time for a party to act has not yet expired, the Board may extend that time for good cause. American Vitamin Products Inc. v. DowBrands Inc., 22 U.S.P.Q.2d 1313, 1315 (T.T.A.B. 1992). See Fed. R. Civ. P. 6(b).³ "The standard for allowing an extension of a

(... continued)

motion unless the time is extended . . . upon motion granted by the Board" 37 C.F.R.

§ 2.127(e)(1). These rules also provide an additional five days for Registrant to respond because Petitioner served the Motion by first-class mail. See 37 C.F.R. § 2.119(c). Reading these rules together results in Registrant being now required to respond to the Motion by May 22, 2003, thirty-five days after service.

³ Rule 6(b) allows the Board to extend the time in which an action must be taken "for cause shown . . . at any time in its discretion . . . if request therefor is (continued ...)

prescribed period prior to the expiration of that period is good cause. Ordinarily, the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." American Vitamin Products, 22 U.S.P.Q.2d at 1315 (citation omitted).

Granting Registrant additional time to respond to the Motion satisfies all these criteria. Registrant seeks this extension of time to permit the parties to explore the possibility of settling this dispute. As more fully set out in the Declaration of Alison Holtzschue, attached hereto as Exhibit A, Registrant is attempting to communicate with Petitioner to suggest that the parties explore this possibility before spending additional resources on litigation. It is reasonable to permit Registrant to explore the likelihood of settling this dispute before possibly incurring substantial legal fees to oppose the Motion. See Sunkist Growers, Inc. v. Benjamin Ansehl Co., 229 U.S.P.Q. 147, 149 (T.T.A.B. 1985)

(... continued)

made before the expiration of the period originally prescribed" Fed. R. Civ. P. 6(b).

(extending time for completion of discovery was, under the circumstances, "reasonable").

Furthermore, Registrant does not seek this extension because of any improper conduct or motive. Negligence has not resulted in an inability to meet the existing deadline. Neither is Registrant acting in bad faith; Registrant has, instead, made a good-faith overture to Petitioner to explore whether they can settle this dispute. Finally, as this is the only request for an extension of time that Registrant has sought in connection with the Motion, Registrant has not abused the privilege of extensions of time.

Accordingly, as Registrant has shown that good cause exists for the Board to exercise its discretion under Rule 6(b) of the Federal Rules of Civil Procedure, Registrant respectfully requests that the Board extend the time for Registrant to respond to the Motion to sixty (60) days after the Board's decision on Registrant's Motion Pursuant To Rule 56(f).

Dated: Washington, D.C.
May 22, 2003

Respectfully submitted,

Rita M. Carrier

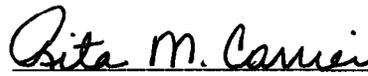
Margaret K. Pfeiffer, Esq.
Rita M. Carrier, Esq.
SULLIVAN & CROMWELL LLP
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 956-7685 (Voice)
(202) 293-6330 (Facsimile)
carrier@sullcrom.com (E-mail)

Attorneys for Registrant,
Alison Holtzschue

Certificate of Service

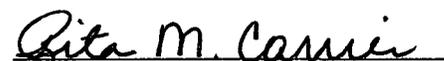
I hereby certify that a true copy of the foregoing Motion To Extend Time To Respond To Motion For Summary Judgment, with the Declaration of Alison Holtzschue attached thereto as Exhibit A, was mailed to Petitioner Georgia Graham Jones, 42 Pascal Lane, Austin, Texas 78746, via first-class mail, postage prepaid, this 22nd day of May, 2003.

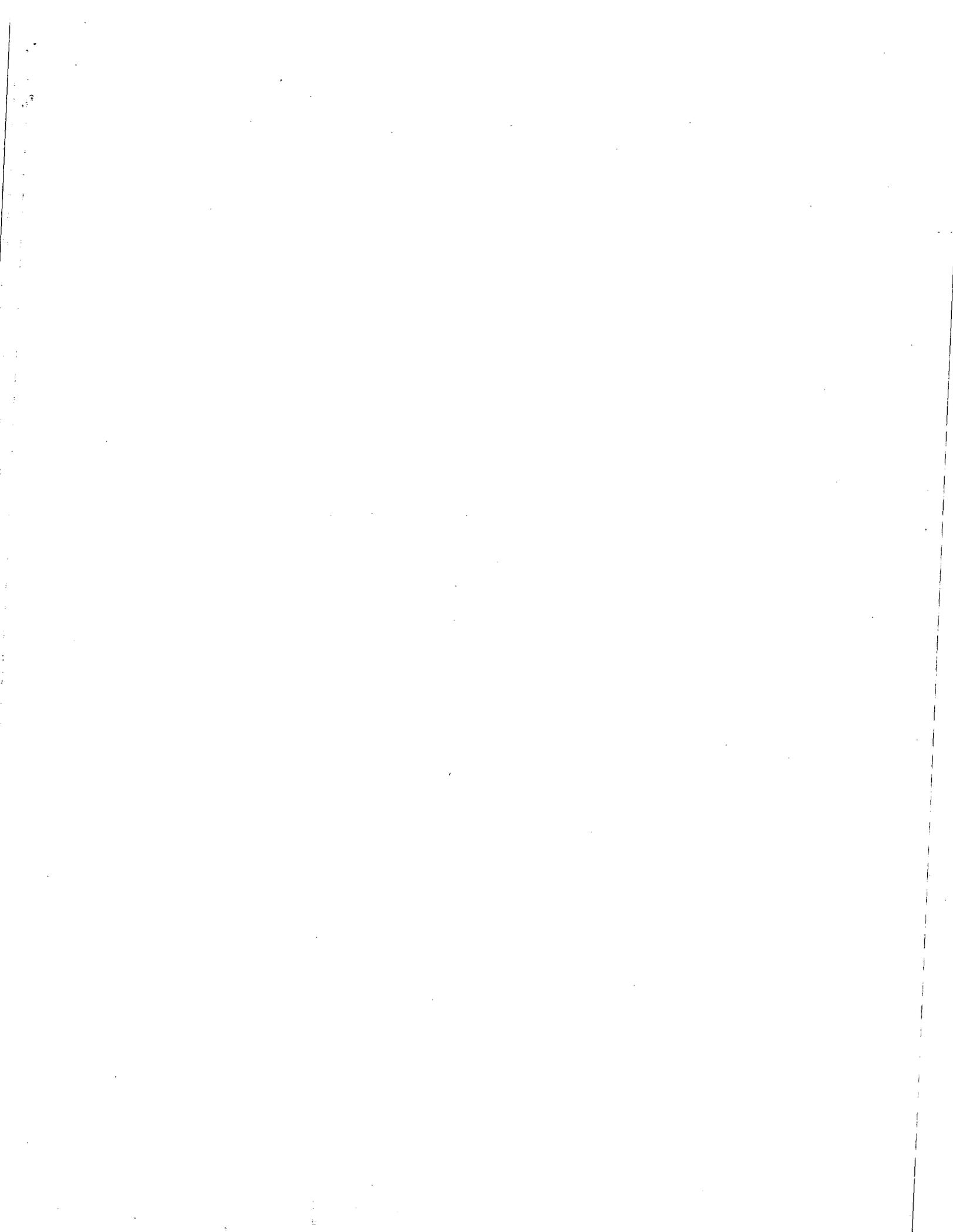
Dated: May 22, 2003


Rita M. Carrier

Certificate of Mailing

I hereby certify that, in connection with Cancellation No. 92040746, this Motion To Extend Time To Respond To Motion For Summary Judgment, with the Declaration of Alison Holtzschue attached as Exhibit A, is being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514, on this 22nd day of May, 2003.


Rita M. Carrier



Ms. Georgia Graham Jones at 42 Pascal Lane, Austin, TX 78746, the address that she has used in all her correspondence on this matter with the Trademark Trial and Appeal Board. I also sent a copy of this letter to my attorneys at Sullivan & Cromwell LLP.

3. On May 16, 2003, one of my attorneys, Rita M. Carrier, informed me that the Web site of the United States Postal Service, www.usps.com, indicated that Ms. Jones had not yet signed for the letter that I had sent to her. I also knew that I had not yet received the return receipt from Ms. Jones. Accordingly, on May 19, 2003, I sent the letters attached hereto as Exhibit 2 to Ms. Georgia Graham Jones, but this time I addressed them to the corporate address for her company that I found on its Web site: Computer Moms International Corporation, 537 Woodward Street, Suite D, Austin, TX 78704. I deposited these letters as certified mail, return receipt requested, with the United States Postal Service. I also sent a copy of these letters to my attorneys at Sullivan & Cromwell LLP.

4. I have not yet received any response from Ms. Jones to my correspondence.

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

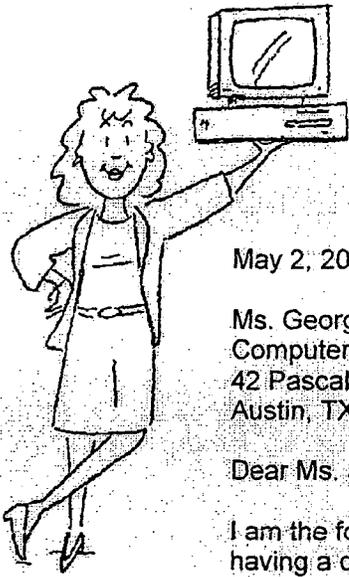
Executed: New York, New York
May 22, 2003

A handwritten signature in black ink, appearing to read 'Alison Holtzschue', with a long horizontal line extending to the right from the end of the signature.

Alison Holtzschue

ALL-STATE LEGAL* 800-226-0510





computers_{dot}mom

(212) 861-5465

www.computersdotmom.com

May 2, 2003

Ms. Georgia Graham Jones
Computer Moms
42 Pascal Lane
Austin, TX 78746

Dear Ms. Jones:

I am the founder of computers dot mom and thus find myself in the unfortunate position of having a disagreement with a person I've never met.

My lawyers at Sullivan and Cromwell have advised me that it is highly unlikely that the Board of the Patent and Trademark Office will decide the case on summary judgment and that discovery will, therefore, be necessary. It might make more sense for both of us to see if there is another way to resolve this matter without getting into time-consuming and costly discovery.

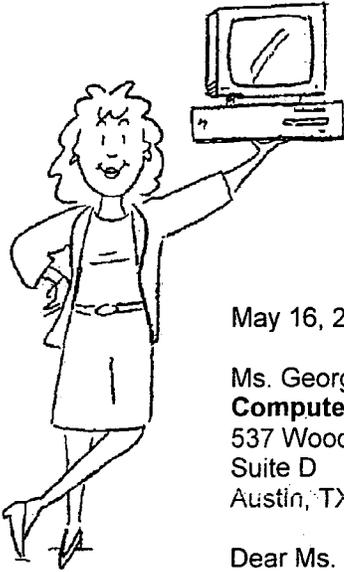
We are moving our offices in Manhattan at the end of this month and, as you know, even without the move our mail has not been as reliable as one might wish. Please feel free to email if you prefer. You can reach me directly at: info@computersdotmom.com.

Yours truly,

Alison Holtzschue
President

*computer skills, confidence,
and really good coffee.*

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computers_{dot}mom

(212) 861-5465

www.computersdotmom.com

May 16, 2003

Ms. Georgia Graham Jones
Computer Moms International Corporation
537 Woodward Street
Suite D
Austin, TX 78704

Dear Ms. Jones:

I sent you a letter by certified mail about two weeks ago using the Pascal Lane address that was from your recent correspondence, but according to the US Post Office website it has not been received. Accordingly, I enclose a copy and am now sending it to the corporate address on your website.

I look forward to hearing from you.

Yours truly,

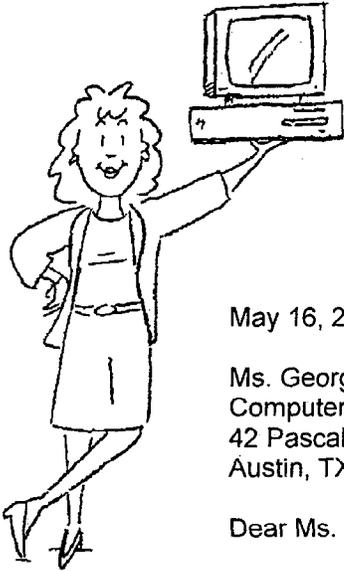
A handwritten signature in black ink, appearing to read 'Alison Holtzschue', with a large flourish extending to the right.

Alison Holtzschue
President
computers dot mom

AJH:BF

cc: Rita Carrier, Sullivan & Cromwell

*computer skills, confidence,
and really good coffee.*



computers_{dot}mom

(212) 861-5465

www.computersdotmom.com

May 16, 2003

Ms. Georgia Graham Jones
Computer Moms
42 Pascal Lane
Austin, TX 78746

Dear Ms. Jones:

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We are moving our offices in Manhattan at the end of this month and, as you know, even without the move our mail has not been as reliable as one might wish. Please feel free to email if you prefer. You can reach me directly at: info@computersdotmom.com.

Yours truly,

Alison Holtzschue
President

AJH:BF

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and really good coffee.*