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

<b>Proceeding</b>	92042132
<b>Party</b>	Defendant TROY DENDEKKER Solid Printing Inc. 1015 E. Raymond Way Anaheim, CA 92801
<b>Correspondence Address</b>	AMANDA J. MCLAUGHLIN GOODMAN & CRAY, LLP 414 W. FOURTH STREET, SUITE A SANTA ANA, CA 92701
<b>Submission</b>	Opposition/Response to Motion
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<b>Date</b>	12/13/2004
<b>Attachments</b>	Opposition to Motion to Reopen Time 12-13-04.pdf ( 5 pages )

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

DIVA DESIGNS/BIMBO,

Petitioner,

v.

TROY DENDEKKER,

Registrant.

Cancellation No. 92042132

Registration No. 2554024

**OPPOSITION TO MOTION TO REOPEN TIME; MOTION TO DISMISS**

Registrant, Troy Dendekker, hereby opposes Petitioner's Motion to Reopen Time in this proceeding. Petitioner, in its Motion, fails to show good cause why a brief was not filed and thus has not sufficiently justified a reopening of time in this proceeding. Accordingly, Petitioner's Motion must be denied. 37 C.F.R. §2.128(a)(3). Furthermore, as the time for taking testimony by Petitioner has lapsed and Petitioner has not, in fact, taken any testimony, Registrant respectfully requests that the petition to cancel be dismissed with prejudice. 37 C.F.R. §2.132(a).

Petitioner attributes its failure to file a brief in this proceeding on its purported lack of receipt of the Notice and Trial Dates dated June 20, 2003 from the Trademark Trial and Appeal Board ("TTAB") which set forth the deadlines in this proceeding. Petitioner contends that, on the basis of such lack of notice, its noncompliance with the applicable deadlines constitutes excusable neglect and, thus, good cause exists for the reopening of time in the proceeding.

On May 28, 2003, Petitioner filed a petition to cancel Registrant's registration for the mark BOY BEATER. On June 20, 2003, the TTAB mailed to the parties notice that

the cancellation proceeding had commenced. The notice included a scheduling order for the proceeding, with discovery set to close on January 6, 2004, the period for Petitioner's testimony period to end on April 5, 2004, and the period for Petitioner's rebuttal testimony to end on July 19, 2004.

During the discovery and testimony periods, Petitioner did not conduct any discovery or take any testimony. Furthermore, Petitioner did not check on the status of the case at all and claims to have been unaware of any deadlines until it received the Order to Show Cause from the TTAB on October 27, 2004. Petitioner filed its Motion to Reopen Time on November 23, 2004.

Both Petitioner's Motion to Reopen Time and Registrant's Motion to Dismiss are governed by the excusable neglect standard. *HKG Indus., Inc. v. Perma-Pipe Inc.*, 49 USPQ2d 1156, 1157 (T.T.A.B. 1998). Contrary to Petitioner's assertions, Petitioner does not meet the standard for excusable neglect as adopted by the Supreme Court in *Pioneer Investment Services v. Brunswick Associates Limited Partnership*, 507 U.S. 380 (1993). Petitioner argues that its failure to take timely action in this proceeding will not prejudice the Registrant. However, two key witnesses upon whom Registrant intended to rely in defense of this proceeding have recently relocated and are no longer readily available for the purposes of testimony. Thus, Registrant has suffered prejudice by reason of Petitioner's delay.

With regard to the second factor considered when evaluating excusable neglect, Petitioner illogically argues that its lack of compliance with the deadlines in this proceeding will not impact any judicial proceedings as there are no such proceedings to impact. If Petitioner's Motion to Reopen Time is granted, the impact would be felt not only in this proceeding but in many other TTAB proceedings. There would be a

significant delay in this proceeding as the discovery and testimony periods would have to be reopened whereas had Petitioner acted as required by procedure, the matter would already have been briefed and may already have been decided on the merits. Reopening time under circumstances such as these unnecessarily burdens the TTAB'S docket and would impact not only this judicial proceeding, but judicial proceedings in general.

The third and most important factor considered when evaluating excusable neglect is the reason for the delay and whether it was within the reasonable control of the Petitioner. Petitioner cites as the reason for its failure to act in this proceeding its lack of receipt of notice from the TTAB of the deadlines in this case. However, in fall of 2003, mere months after the filing of this petition to cancel, the TTABVUE database was made available on the Internet. This database can be utilized as a status resource and allows viewing and printing of most filings, motions and orders in any particular proceeding. All filings and notices, including the notice which Petitioner claims not to have received, have been readily available on TTABVUE. Furthermore, in addition to TTABVUE, Petitioner could have called the TTAB or inspected the public file at the TTAB in order to ascertain status of the proceedings. It is incumbent on the Petitioner to present evidence in support of its case. Clearly, when Petitioner failed to inquire as to the status of its case over a period of approximately seventeen months, Petitioner has no excuse for seeking to reopen time following the lapse of all pertinent deadlines. Petitioner is unjustified in blaming its inaction on lack of notice of deadlines.

There is no evidence that Petitioner acted in bad faith when failing to act at all in this proceeding, however, such evidence is unnecessary as the other factors for consideration overwhelmingly support a conclusion that there is no excuse for Petitioner's neglect. Accordingly, as Petitioner's failure to brief its case was not the

result of excusable neglect, we respectfully request that Petitioner's Motion to Reopen Time be denied. Furthermore, due to the lack of evidence in support of Petitioner's case, we request that this petition to cancel be dismissed with prejudice.

Respectfully submitted,  
GOODMAN LAW GROUP, PC

Dated: December 13, 2004

/Amanda J. McLaughlin/

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing **OPPOSITION TO MOTION TO REOPEN TIME; MOTION TO DISMISS** was served upon counsel for Petitioner by depositing one copy thereof in the United States Mail, first class postage prepaid, on December 13, 2004, addressed as follows:

Paul C. Rapp, Esq.  
348 Long Pond Road  
Housatonic, MA 01236

/Amanda McLaughlin /

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