

ESTTA Tracking number: **ESTTA475250**

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

Proceeding	92055403
Party	Plaintiff Barry Biondo dba Topsy Spa and Salon
Correspondence Address	WENDY PETERSON NOT JUST PATENTS LLC PO BOX 18716 MINNEAPOLIS, MN 55418 UNITED STATES wsp@njpls.com
Submission	Reply in Support of Motion
Filer's Name	Wendy Peterson
Filer's e-mail	wsp@NJPLS.com
Signature	/Wendy Peterson/
Date	05/30/2012
Attachments	Reply to Opposition to Motion to suspend with email.pdf (4 pages)(86536 bytes)

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

In the matter of Trademark Registration No. 3529699

Cancellation No. 92055403

For the mark: TIPSY

Registration Date: November 11, 2008

Barry Biondo dba Tippy Spa and Salon

vs.

Thanh Nguyen

REPLY TO OPPOSITION TO REQUEST FOR RECONSIDERATION

Petitioner asks the Board to use its discretion to consider this short reply brief even though reply briefs are not favored.

Petitioner Barry Biondo's consent to the extension of time for Registrant to Respond to the Request for Reconsideration was based on bad information from Registrant as to the reason for the requested delay and Petitioner seeks to withdraw consent for the late response. Petitioner's objections to the lack of service are already of record on TTABVUE 92055403-CAN-9 on 04/24/2011 yet the service problems have continued.

Registrant claims in paragraph 8 that Registrant did not receive the Request for Reconsideration because of a "service error." Registrant's attorney claimed to Petitioner's attorney that each change of correspondence address was properly served on Petitioner and that the lack of service was some other type of error. Petitioner has not received a single notice of correspondence address change although even more have since been filed.

Registrant has now admitted that all of the service problems were Registrant's fault and that Registrant thought that the TTAB provided service and that it was not the Registrant's

responsibility. (See attached email from Registrant to Petitioner). Sworn Certificates of Service by Registrant have been untrue and a continuing disregard of TTAB Rules of Procedure.

Under the circumstances, Petitioner would not have consented to extending the time for Registrant to respond had Registrant admitted sooner to disregarding service requirements. Allowing Registrant to benefit from claiming “service error” when the service error was Registrant’s disregard of the rule would be prejudicial to Petitioner who was not accorded any initial right to object to the Stay.

Petitioner’s attorney also objects to the attempts by Registrant’s attorney, referenced in paragraph 10, to attempt to force Petitioner’s attorney give opinions on litigation outside of this proceeding and objects to the attempts by Registrant’s attorney to treat the refusal of Petitioner’s attorney to violate confidentiality and other rights as some type of evidence in Registrant’s favor.

Registrant is asking for relief based on issues outside the registerability of the mark in question when the Petition to Cancel is clearly based on the fact that Registrant is not using the mark as a service mark for the identified services and the mark is not a source indicator for the identified services. These registerability issues are clearly within the Board’s discretion to decide without further delay by Registrant.

Submitted By: /Wendy Peterson/

Date: May 30, 2012

Wendy Peterson, Attorney for Petitioner Barry Biondo dba Topsy Spa & Salon

CERTIFICATE OF SERVICE

I hereby certify that on May 30, 2012, the foregoing was served upon Registrant's attorneys by email as agreed to by Registrant:

PAGE MRACHEK FITZGERALD & ROSE PA

1000 SE MONTEREY COMMONS BLVD, SUITE 306

STUART, FL 34996

UNITED STATES

skonopka@pm-law.com, pgillman@pm-law.com, lchristian@pm-law.com, snickey@pm-law.com, mjohnston@pm-law.com

By: /Wendy Peterson/

Date: May 30, 2012

Wendy Peterson, Attorney for Applicant, Barry Biondo dba Topsy Spa & Salon

Date: Fri, 25 May 2012 16:59:00 -0400 [04:59:00 PM EDT]

From: Paige Gillman <PHardy@pm-law.com>

To: wsp@njpls.com

Subject: RE: lack of service

Part(s):  2 2012 05 22 Respondent's Response to Motion to Reconsider Stay.pdf 5 MB

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Wendy,

You are correct that we filed our response and I was under the impression that the filing, and service by email was satisfied, by the filing (as is the case in federal court). I thought that my office also sent you an additional email with the document to verify that you received the document, however I have attached it now as well. If you have any additional questions, feel free to contact my office next week.

From: wspnjpls@gmail.com [mailto:wspnjpls@gmail.com] **On Behalf Of** Wendy Peterson

Sent: Friday, May 25, 2012 4:48 PM

To: Paige Gillman

Subject: lack of service

Hello Paige,

I see that you have filed your objection to the Request for Reconsideration and that it says that you sent me service by email which I did not get. I also checked into the address change that you filed and there wasn't a way for you to file it without having to check the box that said that you sent me service, which you have already said that you did not do.

Could you please check into the cause of the most recent failure to provide service and fix it please and provide me with service on your objection.

Thanks.

Wendy Peterson

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