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

Proceeding	92057484
Party	Plaintiff Shirley's World, L.P.
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Submission	Other Motions/Papers
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Signature	/s/ Jackie Joseph
Date	10/24/2013
Attachments	Petitioners Objection to Respondent's Reply (D. Coke).pdf(12641 bytes)

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

**In the Matter of Registration No. 3418196
Issued on April 29, 2008**

Shirley's World, L.P.,

Cancellation No.:
92057484

Petitioner,

- against -

Earl C.J. Prater,
Respondent

**PETITIONER'S OBJECTION TO RESPONDENT'S REPLY
IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE ANSWER
AND REQUEST FOR DEFAULT**

A. Objection to Reply.

Petitioner hereby objects to the Respondent's reply in support of his motion to extend time to answer ("Reply") on the following grounds:

1. Respondent failed to serve Petitioner with a copy of the Reply, which appears to have been filed on October 15, 2013 (notwithstanding that it is dated October 8, 2013). Notably, the Reply does not include a proof of service, as required by Trademark Rule 2.119 (a) and (b). Petitioner became aware of the Reply on October 23, 2013, when Petitioner checked the Prosecution History for this matter on the TTAB on-line Inquiry System to ascertain the status of this matter. Accordingly, the Board should not consider the Reply. See Trademark Rule 2.119(a).

2. On July 8, 2013, Petitioner properly served the Petition on Respondent by FedEx overnight at the street address listed at that time in the subject registration, pursuant to Trademark Rule §2.119(b)(5). This information is accurately reflected in the Certificate of Service that is attached to the Petition. Moreover, according to the Board's Institution Order, on

or about July 9, 2013, the Board also served Respondent with a Notice of Petition via U.S. mail at the street address listed at that time in the subject registration.

Therefore, Respondent's arguments in the Reply regarding overnight mail delivery to a post office box are irrelevant because the Petition was not mailed to a post office box. Respondent filed a Change of Correspondence Address (changing a street address to a post office box) on August 20, 2013 – six weeks after service of the Petition.

B. Respondent Is In Default.

Petitioner properly filed and served the Petition more than three months ago (i.e., on July 8, 2013). Since that time, Respondent has failed to provide any substantive response, and instead has chosen to focus on procedurally improper tactics that are entirely lacking in substance and designed solely to delay these proceedings.

Pursuant to the Board's Institution Order, Respondent's deadline to file an Answer was August 18, 2013. Respondent failed to file an Answer within the time ordered, or at all. Therefore, Respondent is in default and judgment should be entered in favor of Petitioner absent a showing by Respondent of good cause why default judgment should not be entered against it. See TBMP §§ 312, 508.

Dated: October 24, 2013

EISNER KAHAN
GORRY CHAPMAN ROSS & JAFFE

By: /s/ Jackie M. Joseph
Jackie M. Joseph
Attorneys for Petitioner, Shirley's World,
L.P.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing **PETITIONER'S OBJECTION TO RESPONDENT'S REPLY IN SUPPORT OF MOTION FOR EXTENSION OF TIME TO FILE ANSWER AND REQUEST FOR DEFAULT** was served upon Respondent in this action addressed as follows:

Mr. Earl C.J. Prater
Respondent, acting on his own behalf
P.O. Box 51542
Sparks, NV 89435-1542

BY MAIL. I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. Postal Service on the same day this declaration was executed, with postage thereon fully prepaid at 9601 Wilshire Boulevard, Suite 700, Beverly Hills, California 90210, in the ordinary course of business.

Executed on October 24, 2013, at Beverly Hills, California.

EISNER KAHAN
GORRY CHAPMAN ROSS & JAFFE

By: /s/ Jackie M. Joseph
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