

ESTTA Tracking number: **ESTTA602804**

Filing date: **05/06/2014**

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

Proceeding	77367998
Applicant	Dillard's Inc.
Applied for Mark	THE MADISON AVE FIT
Correspondence Address	SIMOR L MOSKOWITZ WESTERMAN HATTORI DANIELS & ADRIAN 1250 CONNECTICUT AVENUE NW, SUITE 700 WASHINGTON, DC 20036 UNITED STATES smoskowitz@whda.com,trademark@whda.com
Submission	Request for Reconsideration
Attachments	Madison Ave. Request.pdf(152085 bytes)
Filer's Name	Simor L. Moskowitz
Filer's e-mail	trademarkmail@WHDA.com,smoskowitz@whda.com
Signature	/Simor L. Moskowitz/
Date	05/06/2014

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

In re the application of:)
)
Dillard's, Inc.)
)
Serial No.: 77/367998)
)
Filed: January 9, 2009)
)
Mark: THE MADISON AVE FIT)

REQUEST FOR RECONSIDERATION

Pursuant to Rule 2.144 of the Trademark Rules of Practice, 37 CFR §2.144, Applicant hereby requests reconsideration of the Board's April 14, 2014 Order dismissing the appeal herein, and respectfully submits that "sufficient cause" exists for a favorable reconsideration of this request and reinstatement of the appeal.

Section 2.144 states that

Any request for rehearing or reconsideration, or modification of the decision, must be filed within one month from the date of the decision. Such time may be extended by the Trademark Trial and Appeal Board upon a showing of sufficient cause.

Undersigned counsel advises the Board that its March 14, 2014 Order was never received by counsel or his office, and it was not until receiving the Board's April 14, 2014 Order dismissing the appeal, and then checking the TTABVUE database, that counsel only then discovered that the March 14, 2014 Order had been issued. Immediately upon recognizing the foregoing, counsel reviewed his email directory (including "junk" and "spam") for all emails received on March 14, 2014, and particularly focusing on those from ESTTA@uspto.gov. It was noted that various TEAS@uspto.gov

emails and from other senders were received on March 13, 2014, counsel noted no emails received from ESTTA@uspto.gov, and certainly no email relating to this appeal. If it were technically possible to take a snapshot of and attach a copy of counsel's email directory inbox spanning the last email on March 13, 2014 to the first email on March 15, 2015, it would be clear that any Board email forwarding the March 14, 2014 Order was not received by counsel. The last Board email received by counsel was dated March 11, 2014 at 6:46:13 am, and the next email was received on March 19, 2014 at 9:10:20 am, with nothing in between.

Next, counsel checked with the Firm's chief docket clerk, Kent Forrester, and inquired if the Firm docket reflected entry of the March 14, 2014 Order. After a review, Mr. Forrester advised that the Order was not entered in the Firm's docketing system ("CPI"), and that he could find no record of having received the Order either by mail (if it was in fact mailed) or by email. A further review indicated that Applicant's Motion to Further Extend Time (see attached) filed March 7, 2014, listed "Filer's email trademarkmail@WHDA.com, smoskowitz@whda.com", both of which are correct. However, the "Correspondence Address" lists the email addresses as smoskowitz@whda.com, trademark@whda.com. The former is the undersigned's correct email address; but it was noted that the latter is an unused/un-reviewed email address, and should have been listed as the same trademarkmail@whda.com email address noted above.

In summary, other than the explanation as stated above, counsel is unable to explain why the Board's March 14, 2014 Order was not received. But it is clear that the Order was not received by counsel or his docket clerk.

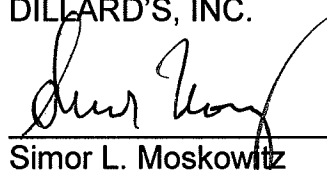
The net result, of course, is that counsel was not aware of the deadline imposed in the March 14, 2014 Order to file Applicant's appeal brief within ten days; and, as a consequence, no appeal brief was filed within the deadline, and the appeal was thus dismissed by the Board's April 14, 2014 Order. The failure to file Applicant's appeal brief certainly was not intentional, and not due to counsel's neglect.

In view of the foregoing, Applicant respectfully submits that the foregoing facts demonstrate a "showing of sufficient cause" to support the grant of this Request for Reconsideration; and therefore requests that the appeal be reinstated and Applicant be afforded the time to file its appeal brief in this appeal.

Respectfully submitted,

DILLARD'S, INC.

By:



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Dated: May 6, 2014
Atty Docket No.: 13913693TM

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Submission	Applicant's Request to Extend
Attachments	APPEALBRIEF.EXT.Madison Ave Fit.1.06.pdf(64348 bytes)
Filer's Name	Simor L. Moskowitz
Filer's e-mail	trademarkmail@WHDA.com,smoskowitz@whda.com
Signature	/Simor L. Moskowitz/
Date	03/07/2014