

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

EAD
Mailed: June 6, 2003

Opposition No. 91117792

MARY KAY, INC.

v.

OLAY COMPANY, INC.

Elizabeth A. Dunn, Attorney:

On October 7, 2002, the Board ordered opposer to show cause why the Board should not treat opposer's failure to file its brief as a concession of the case.

Subsequently, applicant's motion to end suspension and to resume proceedings, filed February 19, 2002, and attached settlement agreement, was matched to the Board's proceeding file. In view of the earlier filing of applicant's motion, the Board's show cause order is vacated.

However, the Board notes that proceedings herein were not suspended. The Board merely approved as conceded applicant's motion, filed November 8, 2000, to extend discovery and trial dates, dates which had expired at the time applicant filed its motion to resume.

Moreover, insofar as applicant's motion to resume indicates that the attached settlement agreement provides that

opposer will withdraw the opposition, the Board notes that the settlement agreement specifies (Paragraph 2):

Mary Kay will execute a copy of the Notice of Withdrawal attached as Exhibit A and Olay will file the document with the Trademark Office.

The settlement agreement has no attachments, and the Board's proceeding file does not contain a withdrawal of the opposition.

Should the Board's file be incomplete¹, the parties may contact Supervisory Legal Assistant Afendi Ziad (703-308-9300 x205 or FAX 703-308-9333) to expedite processing of any missing papers.

Accordingly, proceedings herein are suspended. Opposer is allowed until 30 days from the mailing date on this order to file its withdrawal of the opposition, failing which the Board will resume proceedings and again order opposer to show cause why the Board should not treat opposer's failure to file its brief as a concession of the case.

¹ The Board's prosecution history for this proceeding, including a listing of all papers filed by the parties, may be viewed electronically through the Board Information System Index (BISX), available at the USPTO website (www.uspto.gov).