

T T A B

Docket No. 13239-30

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

In re Application Serial No. 75/864,032



02-06-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

PROMOTION IN MOTION, INC.,	X	
	:	
Opposer,	:	
	:	Opposition No. 125,876
v.	:	
	:	
MALACO LEAF AB,	:	
	:	
Applicant.	X	

**APPLICANT'S STIPULATED MOTION TO FILE A LATE-FILED ANSWER TO NOTICE OF OPPOSITION AND TO SUSPEND THE OPPOSITION PENDING THE OUTCOME OF THE FEDERAL LITIGATION BETWEEN APPLICANT AND OPPOSER**

Applicant, Malaco Leaf AB ("Applicant") respectfully requests that the Trademark Trial and Appeal Board (the "T.T.A.B.") permit Applicant to file the attached late-filed Answer to the Notice of Opposition in the above-captioned proceeding and to suspend the opposition pending the outcome of the federal litigation in the United States District Court for the Southern District of New York (the "Federal Litigation") between Applicant and Opposer.

As set out in the accompanying Memorandum of Law and Declaration of Donna C. Sobel, Applicant submits that it has shown good cause why the answer was not timely filed. Additionally, Opposer's counsel has consented to the filing of the late-filed answer.

WHEREFORE, Applicant prays that it be permitted to file the attached late-filed answer to the Notice of Opposition and that opposition be suspended pending the outcome of the Federal Litigation.

A duplicate copy of this Motion is being filed. A copy of this Motion was served by overnight mail on Opposer.

MALACO LEAF AB

Date: February 6, 2003

By: Donna C. Sobel

Donna C. Sobel  
COUDERT BROTHERS LLP  
Attorneys for Applicant  
1114 Avenue of the Americas  
New York, NY 10036  
(212) 626-4400

**CERTIFICATE OF EXPRESS MAILING**

"Express Mail" Mailing Label No.: EI367792123US  
Date of Deposit: February 6, 2003

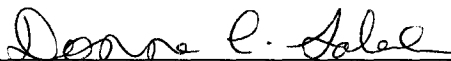
I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR Section 1.10 on the Date of Deposit indicated above in an envelope addressed to the BOX TTAB – NO FEE, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.

Roger Avary  
Name: Roger Avary  
COUDERT BROTHERS LLP  
1114 Avenue of The Americas  
New York, New York 10036  
(212) 626-4400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT'S STIPULATED MOTION TO FILE A LATE-FILED ANSWER TO NOTICE OF OPPOSITION AND TO SUSPEND THE OPPOSITION PENDING THE OUTCOME OF THE FEDERAL LITIGATION BETWEEN APPLICANT AND OPPOSER, APPLICANT'S ANSWER TO NOTICE OF OPPOSITION, APPLICANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS STIPULATED MOTION TO FILE A LATE-FILED ANSWER TO NOTICE OF OPPOSITION AND TO SUSPEND THE OPPOSITION PENDING THE OUTCOME OF THE FEDERAL LITIGATION BETWEEN APPLICANT AND OPPOSER and THE DECLARATION OF DONNA C. SOBEL IN SUPPORT OF APPLICANT'S STIPULATED MOTION TO FILE A LATE-FILED ANSWER TO NOTICE OF OPPOSITION AND TO SUSPEND THE OPPOSITION PENDING THE OUTCOME OF THE FEDERAL LITIGATION BETWEEN APPLICANT AND OPPOSER have been mailed on February 6, 2003 by Federal Express to Opposer's counsel:

Mary L. Kevlin  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, New York 10036

  
\_\_\_\_\_  
Donna C. Sobel

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



In re Application Serial No. 75/864,032

02-06-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

PROMOTION IN MOTION, INC.,

X

Opposer,

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Opposition No. 125,876

v.

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MALACO LEAF AB,

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Applicant.

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:

X

**ANSWER TO NOTICE OF OPPOSITION**

BOX TTAB - NO FEE  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

SIR:

Applicant, Malaco Leaf AB responds to the Notice of Opposition as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 and therefore denies the same leaving Opposer to its proof.

2. Applicant admits that Malaco Leaf AB is a Swedish corporation with its principal place of business at Norbergsgatan 12, S-214, 50 Malmo, Sweden.

Applicant admits the remaining allegations contained in Paragraph 2.

3. Applicant admits that on or about December 3, 1999, Applicant filed a use-based application with the P.T.O. for registration on the Principal Register for a mark in International Class 30 and that application was issued Application Serial No. 75/864,032. Applicant admits that its application is for the registration of a mark that includes a fish-shaped product configuration and the word SWEDISH. Applicant admits that the goods currently covered in the application are “candy, liquorice and chocolate.” Applicant denies the remaining allegations, leaving Opposer to its proof.

4. Applicant admits that its application covers a fish-shaped product configuration and the word SWEDISH on the body of the fish. Applicant denies the remaining allegations, leaving Opposer to its proof.

5. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 and therefore denies the same leaving Opposer to its proof.

6. Applicant admits that Opposer filed a trademark application for the mark FAMOUS SQWISH CANDY FISH in International Class 30 and that this application was issued Application Serial No. 76/197,860. Applicant admits that Applicant filed a Notice of Opposition to that application and that opposition was issued Opposition No. 91150812. Applicant denies the remaining allegations, leaving Opposer to its proof.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Admitted.

15. Applicant admits that Opposer filed an Answer and Counterclaims to the Second Amended Complaint in the litigation on March 14, 2002 and that a copy of that Answer and Counterclaims to the Second Amended Complaint was attached to the Notice of Opposition as Exhibit 2. Applicant denies Opposer's characterization of the Answer and Counterclaims to the Second Amended Complaint which comprise the remainder of paragraph 15.

16. Admitted.

17. Denied.

### **DEFENSES**

In further response to the Notice of Opposition, Applicant asserts that:

1. The Notice of Opposition fails to state a claim upon which relief may be granted.
2. The T.T.A.B. lacks subject matter jurisdiction over a portion of this Notice of Opposition.
3. Opposer lacks standing to assert some of the claims in this Notice of Opposition.
4. Opposer is barred by the doctrine of laches.
5. Opposer is barred by the doctrine of estoppel.
6. Opposer is barred by the doctrine of acquiescence.

WHEREFORE, Applicant prays that the subject opposition be dismissed in its entirety, and that a registration issue to Applicant for its mark.

MALACO LEAF AB

Date: February 6, 2003

By: Donna C. Sobel

Lara A. Holzman  
Donna C. Sobel  
COUDERT BROTHERS LLP  
Attorneys for Applicant  
1114 Avenue of the Americas  
New York, NY 10036  
(212) 626-4400

**CERTIFICATE OF EXPRESS MAILING**

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Roger Avary

Name: Roger Avary  
COUDERT BROTHERS LLP  
1114 Avenue of The Americas  
New York, New York 10036  
(212) 626-4400

CERTIFICATE OF SERVICE

I hereby certify that the foregoing ANSWER TO NOTICE OF OPPOSITION has been mailed on February 6 2003 by Federal Express, in an envelope addressed to Opposer's counsel:

Mary L. Kevlin  
Cowan, Liebowitz & Latman, P.C.  
1133 Avenue of the Americas  
New York, New York 10036



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Donna C. Sobel



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

In re Application Serial No. 75/864,032



02-06-2003

U.S. Patent & TMO/c/TM Mail RcpDt. #22

PROMOTION IN MOTION, INC.,

X

Opposer,

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Opposition No. 125,876

v.

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MALACO LEAF AB,

:

:

Applicant.

X

**APPLICANT'S MEMORANDUM OF LAW IN SUPPORT OF ITS STIPULATED  
MOTION TO FILE A LATE-FILED ANSWER TO NOTICE OF OPPOSITION  
AND TO SUSPEND THE OPPOSITION PENDING THE OUTCOME OF THE  
FEDERAL LITIGATION BETWEEN APPLICANT AND OPPOSER**

Applicant, Malaco Leaf AB ("Applicant") files this memorandum of law in support of its Stipulated Motion to File a Late-Filed Answer to the Notice of Opposition and To Suspend the Opposition Pending the Outcome Of the Federal Litigation between Applicant and Opposer.

**INTRODUCTION**

Late-filed answers are generally accepted by the Trademark Trial and Appeal Board ("T.T.A.B.") when Applicant can show good cause why the answer was not timely filed. T.B.M.P. §317.02; *Paolo's Assoc. Ltd. Part. v. Bodo*, 21 U.S.P.Q.2d 1899, 1901 (Comm'r 1990).

Good cause is generally found to exist where the applicant shows that (1) the delay in filing the answer was not the result of willful conduct or gross neglect on the

part of the applicant, (2) the opposer will not be substantially prejudiced by the delay, and (3) the applicant has a meritorious defense to the action. T.B.M.P. §317.02; *Paolo's*, 21 U.S.P.Q.2d at 1902. Here, the delay in filing the answer was not based on willful conduct or gross neglect by Applicant, Opposer Promotion In Motion, Inc. ("Opposer") will not be substantially prejudiced by the delay and Applicant has a meritorious defense to the action.

THE DELAY IN FILING THE ANSWER WAS NOT BASED ON WILLFUL CONDUCT OR GROSS NEGLIGENCE BY APPLICANT

Applicant did not engage in willful conduct or gross neglect with respect to the delay in filing the answer in this matter. In fact, the delay was not due to Applicant's conduct, but was instead caused by a docketing error by Applicant's counsel, Coudert Brothers LLP ("Coudert Brothers"). Specifically, as set out more fully in the Declaration of Donna C. Sobel in Support of Applicant's Motion to a File Late-Filed Answer to Notice Of Opposition and To Suspend the Opposition Pending the Outcome Of the Federal Litigation between Applicant and Opposer ("Sobel Dec."), Coudert Brothers took over Applicant's trademark prosecution files, including the file for the application at hand, in mid- October.

At that time, Coudert Brothers reviewed the file for Application Serial No. 75/864,032 to determine if there were any upcoming due dates. Coudert Brothers reviewed the most recent correspondence from the United States Patent and Trademark Office ("P.T.O.") in the file, and discovered a letter from the T.T.A.B., dated September 25, 2002, which indicated that an extension of time to file an opposition had been granted.

In January, 2003, Coudert Brothers conducted a more extensive review of the prosecution files in connection with the federal litigation pending between Applicant and Opposer (the “federal litigation”). At that time, Coudert Brothers discovered that several layers underneath the September 25 notice of extension of time, was the Notice of Opposition, which had been sent by the P.T.O. on September 24, 2002. It was not until that time that Coudert Brothers realized that an answer to that Notice of Opposition had been due on November 3, 2002. Sobel Dec. ¶¶ 3-12.

There was no willful conduct or gross negligence on the part of Applicant. In fact, Applicant itself had no role in the delay in filing its answer, and likewise Applicant’s counsel did not willfully delay filing the answer. Applicant’s late-filed answer should therefore be accepted.

The T.T.A.B. does not favor defaults “where it is the attorney rather than the party itself responsible for failure” to file the answer. *Paolo’s*, 21 U.S.P.Q.2d at 1902, 1904 (finding good cause where the delay in filing the answer was due to an error in applicant’s counsel’s docketing system). *See also, Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, 21 U.S.P.Q.2d 1556, 1557 (T.T.A.B. 1992) (good cause shown where the failure to timely file the answer was due to “an inadvertence on the part of applicant’s counsel and not the result of any willful conduct or gross neglect”); *Thrifty Corp. v. Bomax Enter.*, 228 U.S.P.Q. 62, 63 (T.T.A.B. 1985) (the imposition of the severe sanction of default judgment is inappropriate where Applicant’s counsel missed the deadline due to its other litigation responsibilities because “there has been no willful refusal on the part of applicant itself to comply with the rules nor has there been a continued failure to respond to the Board’s orders”).

OPPOSER WILL NOT BE SUBSTANTIALLY PREJUDICED BY THIS DELAY

Opposer will not suffer any prejudice by this minor delay in receiving the answer. The mark that is the subject of the application at issue is also the subject of the federal litigation in the Southern District of New York currently pending between Applicant and Opposer. A related opposition between Applicant and Opposer is also currently pending regarding Opposer's application for the mark FAMOUS SQWISH CANDY FISH, Application Serial No. 76/197,860, for candy in International Class 30 (the "SQWISH Opposition"). At Opposer's request, the SQWISH Opposition has been stayed, pending the outcome of the federal litigation.<sup>1</sup> Opposer requested a stay of the SQWISH Opposition pending the outcome of the federal litigation. The stay in the SQWISH Opposition has been in effect for ten months, since March, 2002. No trial date has been set in the federal litigation, so it is likely that the stay in the SQWISH Opposition will be in effect for at least a few additional months, possibly longer. If such a delay is appropriate in the SQWISH Opposition, then such a delay is justified in this opposition, as both oppositions are the subject of the federal litigation. Additionally, Opposer has stipulated to Applicant's late-filing of the answer to the Notice of Opposition, provided that Applicant's counsel requested that the opposition be stayed pending the outcome of the federal litigation, which applicant's counsel has done. Sobel Dec. ¶ 13.

Accordingly, the three month delay from Applicant's late-filed answer will not cause substantial prejudice to Opposer, and Applicant's late-filed answer should

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<sup>1</sup> Similarly, Applicant's motion also requests that this opposition be stayed pending the outcome of the federal litigation.

therefore be accepted. *See Amaturio Group, Inc. v. Greater Media, Inc.*, 201 U.S.P.Q. 617 (Comm'r 1978) (no prejudice to plaintiff where answer was filed two months late).

APPLICANT HAS A MERITORIOUS DEFENSE TO THIS ACTION

As its basis for opposition, Opposer has alleged that the mark that is the subject of the application at hand is not registrable (1) because it does not serve to identify a single and exclusive source of origin among consumers, (2) because a fish shape is generic for candy, (3) because the words "SWEDISH FISH" are generic for candy<sup>2</sup>, (4) because certain aspects of the fish shape are functional and (5) because it has not acquired distinctiveness. Notice of Opposition ¶¶ 8-12. In its late-filed answer, attached to its motion, Applicant denies each of these allegations, and has asserted affirmative defenses.

In defense of the Opposition, Applicant intends to present evidence that its mark serves to identify a single and exclusive source of origin among consumers and that the shape of Applicant's product has acquired distinctiveness (*e.g.* the mark has been use more than five years, Applicant has had substantial sales of product in conjunction with the mark and Applicant has had extensive advertising of product in conjunction with the mark). Accordingly, Applicant has a meritorious defense to the opposition, and Applicant's late-filed answer should therefore be accepted. *See Hayman*, 21 U.S.P.Q.2d at 1557 (Applicant shows that it has a meritorious defense by submission of an answer which is not frivolous).

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<sup>2</sup> Applicant contends that this is not the correct proceeding for this allegation. Nonetheless, Applicant intends to present evidence that Applicant is the owner of Registration No. 1,273,762 for the mark SWEDISH FISH for candy in International Class

## CONCLUSION

Applicant has demonstrated that it has good cause for its delay in filing its answer because: (1) the delay in filing the answer was not the result of willful conduct or gross neglect by Applicant; (2) Opposer will not be substantially prejudiced by the delay; and (3) Applicant has a meritorious defense to the action. Further, the T.T.A.B. is “reluctant to grant judgments by default and tend[s] to resolve doubt in favor of setting aside a default, since the law favors deciding cases on their merits.” *Paolo’s*, 21 U.S.P.Q.2d at 1902. *See also* T.B.M.P. §317.02 (“it is the policy of the law to decide cases on the merits. Accordingly, the Board is very reluctant to enter a default judgment for failure to file a timely answer, and tends to resolve any doubt on the matter in favor of the defendant”); *Amaturo*, 201 U.S.P.Q. at 618 (the T.T.A.B. has a stated policy “not to enter default judgment where it is clear that a defendant intends to defend its right to maintain its registration and where the late filing has not prejudiced the plaintiff”); *Fort Howard Paper Co. v. Kimberly-Clark Corp.*, 216 U.S.P.Q. 617, 618 (T.T.A.B. 1982) (“judgment by default is viewed with disfavor by the Board unless a party has shown little or no interest in advancing its position”); *Thrifty*, 228 U.S.P.Q. at 63 (the T.T.A.B. believes that “the fairer course in these circumstances is to its exercise discretion in favor of letting this procedure go forward”).

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30. That registration was issued on April 10, 1984, and claimed a first use date of January 1, 1956. That mark has been incontestable for more than twelve years.

Accordingly, if there is any doubt as to whether Applicant has shown good cause for its delay in filing the answer, any such doubt should be resolved in favor of deciding the case on the merits, and Applicant respectfully requests that its Stipulated Motion to File a Late-Filed Answer to the Notice of Opposition and To Suspend the Opposition Pending the Outcome Of the Federal Litigation between Applicant and Opposer be granted.

MALACO LEAF AB

Date: February 6, 2003

By: Donna C. Sobel  
Donna C. Sobel  
COUDERT BROTHERS LLP  
Attorneys for Applicant  
1114 Avenue of the Americas  
New York, NY 10036  
(212) 626-4400

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Roger Avary  
Name: Roger Avary  
COUDERT BROTHERS LLP  
1114 Avenue of The Americas  
New York, New York 10036  
(212) 626-4400

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



In re Application Serial No. 75/864,032

02-06-2003

PROMOTION IN MOTION, INC.,

X

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

Opposer,

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Opposition No. 125,876

v.

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MALACO LEAF AB,

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Applicant.

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X

**DECLARATION OF DONNA C. SOBEL IN SUPPORT OF APPLICANT'S  
STIPULATED MOTION TO FILE A LATE-FILED ANSWER TO NOTICE OF  
OPPOSITION AND TO SUSPEND THE OPPOSITION PENDING THE  
OUTCOME OF THE FEDERAL LITIGATION BETWEEN APPLICANT AND  
OPPOSER**

DONNA C. SOBEL, pursuant to 28 U.S.C. § 1746, declares and says as follows:

1. I serve as counsel to Applicant, Malaco Leaf AB ("Applicant") in this Opposition.
2. I am an associate in the law firm of Coudert Brothers LLP ("Coudert Brothers") and am a member in good standing of the Bar of the State of New York, and the Southern and Eastern Districts of New York. All of the matters discussed herein are based upon my first hand knowledge of the facts, except where indicated.



3. Applicant is the plaintiff in a litigation pending in the Southern District of New York (the “federal litigation”) against Opposer Promotion In Motion, Inc. (“Opposer”) for *inter alia*, trademark infringement, dilution, unfair competition and false advertising.
4. Prior to May, 2002, Applicant was represented by the law firm Gottlieb, Rackman & Reisman, PC (“Gottlieb Rackman”) in the federal litigation.
5. In May, 2002, Applicant retained Coudert Brothers to replace Gottlieb Rackman as its counsel in the federal litigation.
6. Gottlieb Rackman continued to serve as counsel for Applicant in its trademark prosecution and opposition matters.
7. In mid-October, 2002, Applicant directed that Coudert Brothers take over as its counsel in trademark prosecution and opposition matters.
8. In mid-October, 2002, Gottlieb Rackman transferred Applicant’s trademark prosecution files to Coudert Brothers.
9. Upon receipt of the prosecution files from Gottlieb Rackman, we immediately reviewed the most recent correspondence from the United States Patent and Trademark Office (“P.T.O.”) so that appropriate due dates would be docketed. The most recent correspondence from the P.T.O. in the file for the application that is the subject of this opposition was a letter dated September 25, 2002, which indicated that an extension

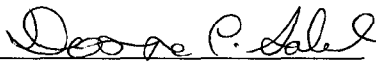
of time to file an opposition had been granted. A copy of that letter is attached as Exhibit A.

10. In January, 2003, we were reviewing the file for Application Serial No. 75/864,032 in conjunction with the federal litigation. Under several pieces of correspondence, in particular, underneath the September 25 letter granting the extension to file the Notice of Opposition, we discovered the Notice of Opposition. The Notice of Opposition was mailed by the U.S.P.T.O. on September 24, 2002 to Gottlieb Rackman. This was the first time that we became aware that the opposition had actually been filed.
11. We immediately called Henry D. Jefferson, the legal assistant who sent the September 25 letter and the September 24 cover sheet to the Notice of Opposition to see if an Answer had been filed by Gottlieb Rackman. He informed us that Applicant's Answer had not been received by the P.T.O. and that it had been due on November 3, 2002.
12. We immediately began drafting an Answer, having had no intention not to file the same before the November 3, 2003 deadline.

13. We contacted Opposer's counsel to ask if they would stipulate to Applicant's late-filing of the Answer to the opposition and they agreed to such a stipulation, provided that we requested that the opposition be stayed pending the outcome of the federal litigation, which we have done.

I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

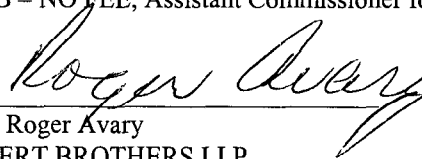
Dated: New York, New York  
February 6, 2003

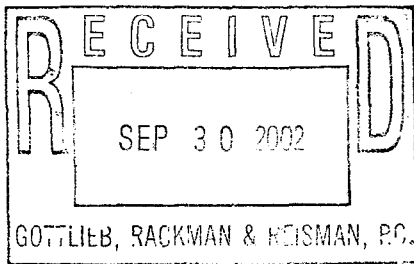
  
\_\_\_\_\_  
Donna C. Sobel

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\_\_\_\_\_  
Name: Roger Avary  
COUDERT BROTHERS LLP  
1114 Avenue of The Americas  
New York, New York 10036  
(212) 626-4400



UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

September 25, 2002

Applicant: Malaco KB  
Serial No.: 75/864,032  
Filed: December 3, 1999  
Mark: SWDISH AND DESIGN

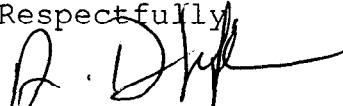
Mary L. Kevlin  
Cowan Liebowitz & Latman, PC  
1133 Avenue of the Americas  
New York, NY 10036

Sir/Madam:

The request for extension of time to oppose, filed under Trademark Rule 2.102 on behalf of Promtion In Motion, Inc., (copy attached), was timely filed but is just now being acted on. The Board regrets the delay and any resulting inconvenience caused to the potential opposer or to applicant.

The request for extension of time to oppose is granted. If any further request for extension of time to oppose or any notice of opposition was filed on or before May 31, 2002, it will be considered as having been timely filed.

Respectfully,

  
Henry D. Jefferson  
Legal Assistant,  
Trademark Trial and  
Appeal Board

Attachment

cc:

Attorney Ref. No. 18166.09

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

In re Application of :

Malaco Leaf AB :

**REQUEST ON CONSENT FOR  
EXTENSION  
OF TIME TO FILE OPPOSITION**

Serial No.: 75/864,032 :

Filed: December 3, 1999 :

For Trademark: :

SWEDISH and Design :

BOX TTAB - NO FEE

Assistant Commissioner for Trademarks

2900 Crystal Drive

Arlington, VA 22202-3513



03-28-2002

U.S. Patent & TMO/TM Mail Rcpt Dt. #77

Sir:

Pursuant to the provisions of Section 2.102(c) of the Trademark Rules of Practice and Section 13 of the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended), Promotion In Motion, Inc., a Delaware corporation, located at 3 Reuten Drive, Closter, New Jersey 07624, by and through its attorneys undersigned, hereby requests that the time for filing a Notice of Opposition to the above identified application, be extended for a period of sixty (60) days up

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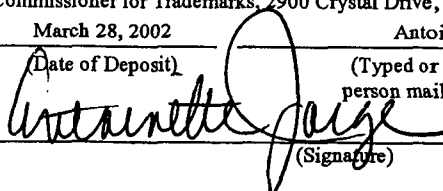
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 on

March 28, 2002

Antoinette Jorge

(Date of Deposit)

(Typed or printed name of  
person mailing paper or fee)



(Signature)

18166.09

SWEDISH and Design  
75/864,032

to and including May 31, 2002. Applicant' counsel has consented to this extension. The parties are currently engaged in a civil litigation which inter alia regards the mark in the application. Discovery in that litigation is scheduled to end in April. The additional time is requested in order to determine whether an opposition will be brought in view of the current civil litigation.

The application was published in the Official Gazette of January 1, 2002.

This Request is submitted in triplicate, as required by 37 C.F.R. § 2.102(d).

Dated: March 28, 2002

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.  
Attorneys for Potential Opposer

By Mary L. Keylin

Mary L. Keylin  
1133 Avenue of the Americas  
New York, New York 10036  
(212) 790-9200

18166.09

SWEDISH and Design  
75/864,032

Certificate of Service

The undersigned hereby certifies that the foregoing Request on Request On Consent for Extension of Time to File Opposition was served on Applicant by mailing a copy, first class, postage prepaid, to Applicant's attorney Mario A. Savio, Esq., Gottlieb, Rackman & Reisman P.C., 270 Madison Avenue, New York , New York 10016 on March 28, 2002.

By: Mary L. Kevlin  
Mary L. Kevlin