

TTAB

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

In the Matter of Trademark Application Serial No. 76/026,184
For the Mark: FARM LIVING
Published in the Official Gazette January 2, 2001

Reiman Publications, LLC.	:	
	:	
Opposer	:	
v.	:	Opposition No. 150,075
	:	
Farm Living, Inc.	:	
	:	
Applicant	:	
	:	

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

REPLY TO BRIEF IN OPPOSITION TO APPLICANT'S MOTION TO
RESUME PROCEEDINGS NUNC PRO TUNC

02 NOV -4 AM 9:16
TRADEMARK TRIAL AND
APPEAL BOARD

Applicant's Reply:

Applicant files this Reply to respond to new issues raised
in Opposer's Brief in Opposition¹.

Opposer mischaracterizes the agreement between the parties
as being "informal." It is uncontradicted that the parties had

¹ Opposer's Brief was not received by Applicant's counsel until October 17, 2002
notwithstanding a mailing date of October 8, 2002. Thus this Reply should be
considered timely filed.

an agreement. It is uncontradicted that the agreement was binding between the parties. The agreement was not subject to the success of Opposer's trial deposition of Mr. Anderson.

Immediately after the trial deposition of Mr. Anderson, Applicant's counsel forwarded correspondence to Opposer's counsel confirming the parties' agreement. Copies of this correspondence, August 26, August 29 and September 11, referencing the agreement are attached hereto.

It was not until September 13, 2002 that Opposer made its first request to take a second trial deposition. This request was not only made after the trial deposition of August 22, 2002, but was after the date Opposer agreed to close its testimony on August 27, 2002. The reason the date August 27, 2002 was chosen was not intended to allow Opposer additional time to take more depositions but only to provide a cushion in the event the trial deposition of Mr. Anderson had to be again postponed from the agreed upon date of August 22, 2002.

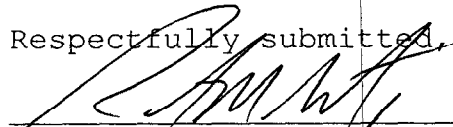
At this stage, Applicant will incur additional legal expenses and travel expenses for Opposer to take additional depositions. When will Opposer's time be up to take more depositions if new issues are raised? The original and subsequent extensions of Plaintiff's trial testimony period was

only an accommodation to take a single deposition. The time for Plaintiff to take trial testimony expired June 15, 2002.

Finally, the Board has not made any determination as to the admissibility of the objected document. Opposer's concern, the admissibility of the document is not ripe. Even if Opposer is conceding the issue of non-admissibility, it would be unfair to allow Opposer to introduce new documents at this time or to garner additional testimony from new witnesses, all after Opposer's testimony period expired.

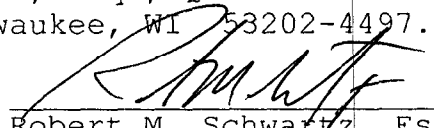
Wherefore, Applicant respectfully requests its Motion be granted to resume proceedings *Nunc Pro Tunc*.

Respectfully submitted,


Robert M. Schwartz, Esq.
Attorney for Applicant:
Farm Living, Inc.
200 E. Broward Boulevard
Suite 1500
Fort Lauderdale, FL 33301
Telephone: (954) 527-6252
Facsimile: (954) 333-4252

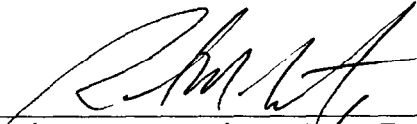
CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of Applicant's Reply to Opposer's Brief in Opposition to Applicant's Motion to Resume Proceedings *Nunc Pro Tunc* has been served by First-Class mail, postage prepaid, this 25th day of October, 2002, to: Opposer's attorney, Nathan D. Jamison, Esq., Quarles & Brady, LLP, 411 East Wisconsin Avenue, Milwaukee, WI 53202-4497.


Robert M. Schwartz, Esq.

CERTIFICATE OF MAILING

I CERTIFY that on October 25th, 2002 a copy of the foregoing Applicant's Reply to Opposer's Brief in Opposition to Applicant's Motion to Resume Proceedings *Nunc Pro Tunc* was sent by U.S. Postal Service, First Class Mail to Box TTAB, No Fee, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513.



Robert M. Schwartz, Esq.

RUDEN
MCCLOSKEY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FLORIDA 33301

POST OFFICE BOX 1900
FORT LAUDERDALE, FLORIDA 33302

(954) 527-6252
FAX: (954) 333-4252
ROBERT.SCHWARTZ@RUDEN.COM

August 29, 2002

Mr. Nathan Jamison
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Re: Farm Living, Inc. adv. Reiman Publications, LLC
Opposition No. 91/150,075
Our File No.: 42868-0001

Dear Nathan:

Further to our letter of August 26, 2002, we have re-calculated the testimony dates, based on the date of the deposition of Jeffrey Anderson (August 22, 2002) being the close of your testimony period, as follows:

30-day testimony period for party in position of plaintiff to close:	August 22, 2002
30-day testimony period for party in position of defendant to close:	October 21, 2002
15-day rebuttal testimony period for plaintiff to close:	December 5, 2002

Please confirm that these dates are correct, and that you will attend to filing same with the Trademark Trial and Appeal Board and advise them to remove the suspension.

Sincerely,

RUDEN, MCCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.


Robert M. Schwartz

RMS/jml
cc: Matt Nelles, Esq.

FTL:931604:1

RUDEN
MCCLOSKEY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FLORIDA 33301

POST OFFICE BOX 1900
FORT LAUDERDALE, FLORIDA 33302

(954) 527-6252
FAX: (954) 333-4252
ROBERT.SCHWARTZ@RUDEN.COM

August 26, 2002

Mr. Nathan Jamison
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

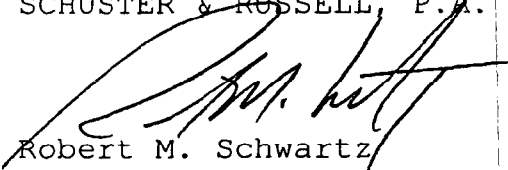
Re: Farm Living, Inc. adv. Reiman Publications, LLC
Opposition No. 91/150,075
Our File No.: 42868-0001

Dear Nathan:

This shall serve to confirm our telephone conversation prior to the trial deposition of Jeff Anderson, wherein you raised the issue that the proceedings have been suspended by the Trademark Trial and Appeal Board. We agreed to stipulate to remove the suspension and proceed by agreement, with your trial witness, and advise the Trademark Trial and Appeal Board accordingly. I also confirm, that all dates will be rescheduled, based on the actual date of the deposition being the close of your testimony period, as we have previously agreed.

Sincerely,

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.


Robert M. Schwartz

RMS/ms

cc: Matt Nelles, Esq.

FTL:928779:1

RUDEN
MCCLOSKEY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FLORIDA 33301

POST OFFICE BOX 1900
FORT LAUDERDALE, FLORIDA 33302

(954) 527-6252
FAX: (954) 333-4252
ROBERT.SCHWARTZ@RUDEN.COM

September 11, 2002

VIA FACSIMILE
and U.S. MAIL

Mr. Nathan Jamison
Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202

Re: Trademark Trial and Appeal Board
Reiman Publications LLC vs. Farm Living, Inc.
Opposition No. 91/150,075
Our File No.: 42868-0001

Dear Mr. Jamison:

Pursuant to our telephone conversation on September 9, 2002, we are responding to the request to again extend Reiman Publications' trial testimony period, to take the testimony of an additional witness. Respectfully, we object and cannot agree to any additional extension at this time. We already extended the deadline at your request in June so that Reiman Publications could depose Jeff Anderson, whose deposition was set on just two days notice and only one day before the testimony period ended. As a courtesy, to accommodate scheduling, we agreed to allow Mr. Anderson's testimony to take place after the deadline. Our agreement to this previous extension was predicated on your representation to us that it was solely for the purpose of taking the deposition of Jeff Anderson.

As we agreed prior to the taking of Mr. Anderson's deposition, you were to notify the Trademark Trial and Appeal Board that the testimony period of the Defendant (Farm Living) ended October 22, 2002. I addressed this in my correspondence to you of August 26, 2002 and August 29, 2002. The October 22, 2002 date would thus conform to an appropriate time period to close defendant's testimony period after your August 22, 2002 deposition of Mr. Anderson, which we permitted you to extend from the June 15, 2002 and July 13, 2002 deadlines. Unless you

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Mr: Nathan Jamison
Quarles & Brady LLP
September 11, 2002
Page 2

notify the Board accordingly, I will have no alternative but to move the Board to enforce our Agreement. Please let me know by Tuesday, September 17, 2002.

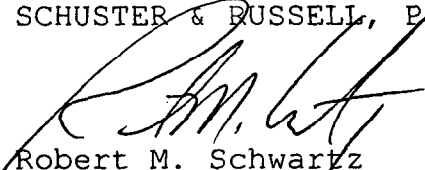
As per our telephone conversation of September 9, 2002, I also confirm advising you regarding the confidential portions of the August 22, 2002 deposition that were apparently inadvertently included by your court reporter in the transcripts of Jeff Anderson that we received on September 9th. I have yet to hear back from you. Therefore, we have removed and separated out the following portions of the deposition transcripts which we shall designate as confidential:

- (1) Page 37, line 4 to page 42, line 9; and
- (2) Page 47, line 9 to page 49, line 21.

Please advise if you do not intend to maintain these portions as confidential.

Sincerely,

RUDEN, McCLOSKEY, SMITH,
SCHUSTER & RUSSELL, P.A.



Robert M. Schwartz

RMS/ms

cc: Farm Living, Inc.
Matt Nelles, Esq.

RUDEN
MCCLOSKEY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

FAXED
No 5:07P

200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FLORIDA 33301

(954) 527-6252
FAX: (954) 333-4252
ROBERT.SCHWARTZ@RUDEN.COM

FACSIMILE COVER SHEET

DATE: September 11, 2002

FROM: Robert M. Schwartz

FILE NO.: Trademark Trial and Appeal Board
Reiman Publications LLC vs. Farm Living, Inc.
Opposition No. 91/150,075
Our File No.: 42868-0001

NUMBER OF PAGES: 3 (Including this Cover Page)

If there are any problems or complications, please notify us immediately at (954) 764-6660.

TO: Nate Jamison

COMPANY: Quarles & Brady LLP

FAX NO.: (414) 271-3552

COMMENTS: Please see attached correspondence.

RMS

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Confirmation Report-Memory Send

Time : Sep-11-02 04:59pm
Tel line 1 : 9547644996
Tel line 2 : 9547644996
Name : RUDEN McCLOSKEY FTL

Job number : 105
Date : Sep-11 04:57pm
To : 1675#42868#0001#14142713552
Document Pages : 03
Start time : Sep-11 04:57pm
End time : Sep-11 04:59pm
Pages sent : 03
Job number : 105

*** SEND SUCCESSFUL ***

RUDEN
MCCLOSKEY
SMITH
SCHUSTER &
RUSSELL, P.A.
ATTORNEYS AT LAW

200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FLORIDA 33301
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FAX NO.: (414) 271-3552

COMMENTS: Please see attached correspondence. *Rms*

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