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

Mailed: March 13, 2003

Opposition No. 91151171

ANGEL WORLD, INC.

v.

TREASURES AND TRINKETS INC.

David Mermelstein, Attorney:

Although this case is still young, it is necessary to lay out its already-tortured prosecution history:

On December 13, 2002, in lieu of an answer, applicant filed a motion to dismiss. By order dated December 20, 2002, the Board indicated that it would treat applicant's motion as one seeking summary judgment pursuant to Fed. R. Civ. P. 56. Opposer was allowed thirty days, or until January 19, 2003, in which to respond to applicant's motion.

On January 17, 2003, opposer filed two papers. First, opposer filed a response to the motion for summary judgment arguing that the motion should be denied because (1) applicant seeks judgment on an unpleaded defense and (2) applicant failed to file an answer to the notice of opposition within the time allowed. Second, opposer filed a motion to admit testimony from another proceeding pursuant to Trademark Rule 2.122(f).

On February 12, 2002, applicant filed a copy of correspondence mailed to opposer. Next, on February 20, 2003, opposer filed a motion for extension of time. Finally, on February 24, 2003, applicant again filed copies of a communication mailed to opposer.

Motion to Admit Testimony

Opposer's reliance on Trademark Rule 2.122(f) is misplaced. Trademark Rule 2.122 discusses matters in evidence at trial. The evidence which may be considered by the Board in connection with a motion for summary judgment is discussed in Trademark Rule 2.127(e)(2):

> For purposes of summary judgment only, a discovery deposition, or an answer to an interrogatory, or a document or thing produced in response to a request for production, or an admission to a request for admission, will be considered by the Trademark Trial and Appeal Board if any party files, with the party's brief on the summary judgment motion, the deposition or any part thereof with any exhibit to the part that is filed, or a copy of the interrogatory and answer thereto with any exhibit made part of the answer, or a copy of the request for production and the documents or things produced in response thereto, or a copy of the request for admission and any exhibit thereto and the admission (or a statement that the party from which an admission was requested failed to respond thereto).

Opposer's motion to admit testimony from another proceeding was thus unnecessary. Applicant may, of course, argue that any such material is not relevant to the issues in this proceeding, or may assert any other argument with respect to reliability or weight to be accorded the prior

testimony. Such arguments should be made in applicant's reply brief on the motion for summary judgment.

Applicant's Correspondence with Opposer

Applicant has copied the Board on several pieces of correspondence it has apparently mailed to opposer. The Board has disregarded these papers. The Board should not be copied on the parties' correspondence, and such papers should not be submitted except in connection with a properly filed motion.

Opposer's Motion to Extend

By its February 20, 2003, paper, opposer requests that the Board extend its time to respond because it has not yet received a copy of applicant's motion. Normally, we would be sympathetic to such a request especially where – as here – applicant has not opposed such relief.

However, opposer's request is puzzling. It is quite obvious that opposer *has* received a copy of applicant's motion, because opposer filed a response to it on January 17, 2003, and that response clearly indicates that opposer has read the paper. It is possible that opposer believes that applicant has filed two motions, but that is not in fact the case. To be perfectly clear, on December 13, 2002, applicant filed a "motion to dismiss for failure to state a claim or in the alternative, for summary judgment on the basis of res judicata." By order dated December 20, 2002,

the Board notified the parties that it would construe applicant's motion as one for summary judgment, and allowed opposer thirty days to respond accordingly. According to the Board's records, that is the only motion which applicant has filed.

Nonetheless, to afford opposer every possible opportunity to respond to applicant's motion, we will allow opposer an additional THIRTY DAYS from the mailing date of this order in which to respond fully to applicant's December 13, 2002, motion with any appropriate evidence or argument.[1] Inasmuch as opposer will by then have had approximately four months in which to respond to the motion, it is unlikely that further extensions will be allowed.

Applicant may file a reply brief within the time allowed under Trademark Rule 2.127(e)(1).

Proceedings Suspended

As noted in the Board's order of December 20, 2002, proceedings herein are SUSPENDED pending resolution of applicant's motion. Accordingly, opposer's argument, made in its January 17, 2003, paper, that applicant's answer is overdue is not well-taken. Because the matter is not germane to the motion to dismiss, opposer's argument will be given no further consideration.

[1] If opposer continues to rely on its argument that applicant seeks judgment on an unpleaded defense, opposer should renew its argument in its response to applicant's motion.

A final note is in order. Opposer has chosen to proceed *pro se* in this matter, as it is entitled to do under the Board's rules. However, the statutes, rules, and other authorities governing the conduct of Board proceedings are not suspended by virtue of the fact that opposer has not retained competent counsel. The Board is not permitted to advise either party or even to discuss their options, appropriate courses of action, or legal strategy.

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