

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

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Mailed: April 1, 2003

Opposition No. 152,233

Whale Communications Ltd.

v.

RedWhale Software

Albert Zervas, Interlocutory Attorney

On September 13, 2002, October 11, 2002 and December 13, 2002, applicant filed motions to extend the time for filing an answer to the notice of opposition.

On January 22, 2003, the Board forwarded copies of applicant's September 13, 2002, October 11, 2002 and December 13, 2002 motions to extend the time to answer¹ to opposer and allowed opposer time to respond to the September 13, 2002, October 11, 2002 and December 13, 2002 motions. On February 27, 2003, opposer filed a response in opposition to the motions.

Applicant, in its motions, maintains that it needs the extensions of time because it is "obtaining information necessary for [its] assessment of this matter and require[s]

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additional time to complete its review." Because (a) applicant has filed extensions of time to file an answer (and has not simply ignored its obligation to answer); (b) applicant has stated an acceptable reason for extending the time to answer; and (c) it is the policy of the law to decide cases on their merits and the Board is very reluctant to enter a default judgment for failure to file a timely answer, see TBMP 317.02, the Board grants applicant's motions to extend time to answer² and extends applicant's time to answer the notice of opposition to **thirty days** from the mailing date of this order.³

Discovery and testimony periods are reset as indicated below. In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

DISCOVERY TO CLOSE: July 1, 2003

30-day testimony period for party
in position of plaintiff to close: September 9, 2003

¹ None of opposer's motions provided proof of service of the motion on opposer's attorney of record, in violation of Trademark Rules 2.119(a) and (b).

² Applicant's motion to extend time (filed November 13, 2002) was entered into the record after the Board mailed its order of January 22, 2002. In view of the disposition of the September 13, 2002, October 11, 2002 and December 13, 2002 motions, applicant's November 13, 2002 motion is moot.

³ Applicant once again is advised that Trademark Rules 2.119(a) and (b) require that all further papers filed with the Board in this proceeding must be served on opposer's attorney, and that proof of service thereon must be provided to the Board.

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30-day testimony period for party
in position of defendant to close: November 28, 2003

15-day rebuttal testimony period
to close: January 12, 2004

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Finally, the Board notes that the notice of opposition in this proceeding identifies two applications, i.e., application Serial Nos. 75/044,952 and 78/045,023. However, the Board's institution order mailed on July 31, 2002 only identifies application Serial No. 78/044,952. The Board confirms that application Serial No. 78/045,023 is involved in this proceeding and amends the institution order to include application Serial No. 78/045,023.