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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant: The American Breeders Co-Op  
a/k/a The Alpaca Breeders Co-Op

Opposition No: 91156975

Publication Date: February 11, 2003

Mark: I LOVE ALPACA.COM

Our File No.: MFI-107

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**DATE OF DEPOSIT:** October 12, 2005  
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Sir:

Transmitted herewith is an Opposer's Response in Opposition to Applicant's Motion for Involuntary Dismissal; Affidavit of Arnold S. Weintraub; Certificate of Service to Dawn Cassie (Counsel for Applicant); Certificate of Express Mailing and Cover Letter and Self Addressed, Stamped Postcard.

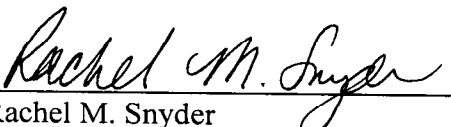
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Rachel M. Snyder



10-12-2005  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

**IN THE MATTER OF:**

Serial No:                    **78 / 094.226**                    **OPPOSITION NO. 91156975**  
Mark:                         **I LOVE ALPACA.COM**  
International Class:       **025**  
Publication Date:         **February 11, 2003**

**THE AMERICAN BREEDERS CO-OP,**

Opposer,

v.

**MERELINDA FARMS, LLC,**

Applicant.

\_\_\_\_\_/

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**OPPOSER'S RESPONSE IN OPPOSITION TO APPLICANT'S MOTION FOR  
INVOLUNTARY DISMISSAL**

Opposer, The American Breeders Co-Op ("Opposer"), by its attorneys, The Weintraub Group, PLC and Nedelman Pawlak, PLLC, hereby responds as follows to the motion for involuntary dismissal of Applicant, Merelinda Farms, LLC ("Applicant"). For the reasons set forth below, Applicant's motion should be denied.

**OVERVIEW**

On or about September 23, 2005, Applicant moved for involuntary dismissal, contending that Opposer had failed to take any testimony during the testimony period ending on September 12, 2005. The September 12 closing date was set forth in the Board's July 13, 2005 order denying Applicant's request for reconsideration of the Board's earlier denial of Applicant's Motion for Summary Judgment. Counsel for Opposer did not receive the July 13, 2005 Order, and therefore learned of the September 12, 2005 closing date for taking testimony in this case only upon receipt of Applicant's most recent motion, the Motion for Involuntary Dismissal. As far as Opposer understood prior to receipt of the motion for dismissal, this matter remained pending due to Applicant's Motion for reconsideration.

As background, Applicant moved for summary judgment in late 2004. Opposer responded to the motion; and Applicant filed a reply. On April 5, 2005, the Board

denied Applicant's motion for summary judgment. On May 4, 2005, Applicant filed its Motion for Reconsideration.

As noted, on July 13, 2005, the Board denied the Motion for Reconsideration, although neither Opposer nor Opposer's Counsel received the July 13, 2005 Order (See Affidavit of Arnold S. Weintraub, attached hereto). The July 13th Order denied Applicant's Motion for Reconsideration, and established September 12, 2005 as the closing date for taking testimony in this opposition case. Given that Opposer did not know of the July 13th Order, it failed to initiate the necessary discovery. Given that Opposer contested the earlier Motion for Summary Judgment on, among others, the basis that discovery had not been completed, Applicant seeks involuntary dismissal.

For the reasons set forth herein, including the simple fact that Opposer did not know of the September 12, 2005 cut-off date, the Motion for Involuntary Dismissal should be denied.

### **ARGUMENT**

Under the test set forth in Applicant's motion papers, the request for dismissal should be denied. First, Opposer's Counsel testifies that he never received the critical order scheduling the cut off date of September 12. As a consequence, Opposer reasonably understood this matter remained in abeyance pending the decision on Applicant's Motion for Reconsideration. The fact that Opposer failed to initiate

testimony effectively speaks for itself.

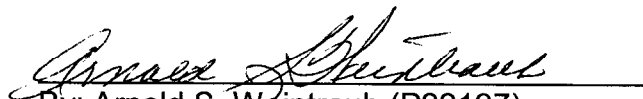
Further, the additional delay is nominal, as the cutoff date was September 12, 2005, and Opposer submits that testimony still may be completed by December 12, 2005. No prejudice to Applicant exists, and the prejudice to Opposer, dismissal of its opposition, is extreme. Finally, Opposer has at all times acted in good faith.

### **CONCLUSION**

For the reasons set forth above, Opposer respectfully requests this Board deny the motion for dismissal, and extend the testimony period to December 12, 2005.

Respectfully submitted,

**THE WEINTRAUB GROUP, P.L.C.**



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Dated: October 11, 2005

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**AFFIDAVIT OF ARNOLD S. WEINTRAUB**

Arnold S. Weintraub, being first duly sworn, deposes and states as follows:

- (1) I am counsel to Opposer, American Breeders Co-Op.
- (2) I have reviewed Applicant's Motion for Involuntary Dismissal, filed on or about September 23, 2005. The Motion contends that Opposer's failure to complete taking testimony by September 12, 2005, the date specified in the Board's July 13, 2005 order denying motion for reconsideration (the "July 13 Order"), should result in involuntary dismissal.
- (3) Neither I nor anyone within my office received the July 13 Order. As a consequence, I reasonably believed that the case remained in abeyance pending the Board's decision on Applicant's Motion for Reconsideration.
- (4) Had I known of the terms of the July 13 Order, I would have taken testimony from Ms. Linda Davis, as previously set forth in earlier pleadings. The failure to do so was solely the result of not knowing that the Motion for Reconsideration had been resolved and the testimony period had commenced to run.
- (5) For these reasons, I respectfully request that Applicant's Motion for Involuntary Dismissal be denied, and Opposer be provided thirty (30) days to complete taking testimony.

FURTHER AFFIANT SAYETH NOT

  
Arnold S. Weintraub

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**CERTIFICATE OF SERVICE**

On this 12<sup>th</sup> day of October, 2005, I did personally serve the below-referenced attorneys with a copy of Opposer's Response in Opposition of Applicant's Motion for Involuntary Dismissal and Affidavit of Arnold S. Weintraub, via facsimile and first-class mail, postage prepaid, and deposited within a U.S. Mail receptacle.

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