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

Proceeding	91156975
Party	Plaintiff The American Breeders Co-Op aka The Alpa The American Breeders Co-Op aka The Alpaca Breeders Co-Op 140 Sheldon Road Berea, OH 44017
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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: **76/473,156** **OPPOSITION NO. 91156975**

Mark: **I LOVE ALPACAS**

The American Breeder Co-Op a/k/a
The Alpaca Breeders Co-Op,

Applicant.

Merelinda Farms, L.L.C., d/b/a
Alpaca.com L.L.C.,

Opposer.

THE WEINTRAUB GROUP, PLC
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**RESPONSE TO SHOW CAUSE ORDER REGARDING FAILURE TO PROSECUTE
AND MOTION TO REOPEN TESTIMONY**

Opposer respectfully requests this case be reopened on the grounds that there has been excusable neglect on behalf of Opposer's attorney.

Specifically, there was administrative and professional turnover with regard to the personnel responsible for this case in Opposer's counsel's office, and this case was administratively confused with a related Opposition (Opposition No. 91167033) between the same parties which has been administratively suspend. This opposition is believed to be

particularly meritorious in that Applicant has not properly used the mark in commerce to justify registration of the mark and the resulting exclusivity of that mark on the goods defined in the registration. It is submitted that there is little if any prejudice to the Applicant, as there is insubstantial commercial use of this mark. Further, the related opposition would entail the cost and effort that would be required to complete this opposition. Opposer understands that there is the administrative cost of continuing this proceeding, but submits that the paramount inquiry is the propriety of registration of the mark, which is best determined by reopening the proceeding. Opposer's remedy should this proceeding not be reopened would be to file a cancellation proceeding upon registration of the mark, which would result in greater administrative costs to the Trademark Office, greater costs to the Applicant and greater costs to the Opposer. Thus, it is submitted that in the interest of administrative economy and the interest of all parties, it is best to reopen these proceedings on the basis of Opposer's excusable neglect, and to permit a short testimony period.

BACKGROUND

This case has had a rather attenuated history to date. The Notice of Opposition was mailed July 10, 2003, a Stipulated Order extending discovery and testimony periods was entered March 9, 2004 after two substitutions of counsel by Applicant's attorney, a Motion for Summary Judgment was filed by Applicant on November 18, 2004. The Order denying Applicant's Motion for Summary Judgment was mailed on April 5, 2005, which set new testimony periods. On May 4, 2005, Applicant filed a Request for Reconsideration of the April 5, 2005 decision denying Applicant's Motion for Summary Judgment. On July 13, 2005 the Board issued an Order denying the Request for Consideration and set a yet new testimony dates. On September 23, 2005, Applicant filed a Motion for Involuntary Dismissal for Opposer's failure to take

testimony during the prescribed period. On December 7, 2005, the Board entered an Order denying the Motion to Dismiss, finding excusable neglect by Opposer who claimed he did not receive the July 13, 2005 Order rescinding testimony, and again reset the testimony periods in this case. On December 20, 2005, Applicant, in this case, filed a Notice of Opposition to a trademark application filed by the Opposer herein, citing the very marks at issue in this case. Opposer in this case answered the opposition in the related case – Opposition No. 91167038.

OPPOSER’S EXCUSABLE NEGLIGENCE

Due to the prior difficulties, these proceedings were being handled by Brad Yaker on behalf of Opposer’s counsel, Mr. Yaker. Mr. Yaker was not an employee of The Weintraub Group but was associated with The Weintraub Group through the firm of Nedelman Pawlak, a law firm which shares space and office facilities with The Weintraub Group and which openly refers, consults, and shares cases with The Weintraub Group. Mr. Yaker ceased reporting to Nedelman Pawlak offices in January 2006 for reasons which have not been fully explained. The principal of the Weintraub Group, Arnold S. Weintraub, maintained contact with Mr. Yaker, albeit sporadic, who assured him that this Opposition was still being handled and that he would bill The Weintraub Group separately for his work on the matter. In or around April of 2006, Mr. Yaker ceased returning calls from Mr. Weintraub on this and other matters. Mr. Weintraub’s investigation into the matter revealed that the testimony period had expired, so a motion to extend testimony was prepared on April 10, 2006. However, there is no record of the motion being filed, and investigation has not revealed the reason the motion was not filed.

The files for this matter and the companion matter had been separately established in The Weintraub Group when the matters were filed with the Trademark Office. Both of these matters

are similarly captioned, although they each bear a different Opposition number. Administrative duties such as filing and entering dates into The Weintraub Group electronic calendaring system were being handled by Rachel Snyder. Upon investigation, it appears that Ms. Snyder had not properly maintained the files for this matter during this period, although it is uncertain if pleadings in this matter were retained by Mr. Yaker without providing copies to Ms. Snyder for filing. Further, it appears that Ms. Snyder improperly combined papers from this opposition into the file for the companion opposition. When Mr. Yaker became non-communicative regarding this case, Ms. Snyder was tasked with retrieving the files for each of the oppositions and putting them in order for review. Ms. Snyder failed to do this, and it became apparent that the files had not been properly maintained. Ms. Snyder was subsequently dismissed from The Weintraub Group.

During the summer of 2006, after the dismissal of Ms. Snyder, The Weintraub Group has been attempting to assemble the files or recreate the files that were active, and conduct a damage assessment. When the Board's Show Cause Notice was received, The Weintraub Group attempted to specifically find and recreate the files with respect to this Opposition, but has been unable to locate the pleading file within The Weintraub Group filing system. Thus, it has been a series of failures which have led to this point. While The Weintraub Group is attempting to remedy the errors, the true extent of the problem was not known until the Notice from this Board was received. Therefore, it is respectfully submitted that while The Weintraub Group has been neglectful, the neglect is excusable due to multiple human failures which have been or remedied

by discharging and replacing the responsible personnel with new employees.

Respectfully submitted,

THE WEINTRAUB GROUP, P.L.C.

s/Arnold S. Weintraub
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Dated: _____

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of any resulting registration, declares that all statements of fact in this paper made of his own knowledge are true; and that all statements made on information and belief are believed to be true.

s/Arnold S. Weintraub
By: Arnold S. Weintraub