UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

DUNN
Mailed: January 13, 2005

Opposition No. 91160073

THE MEOW MIX COMPANY

v.

JAYNE RUTH ROSENBERG

Elizabeth A. Dunn, Attorney:

Inasmuch as no answer to the notice of opposition was filed, on August 7, 2004 the Board entered notice of default against applicant under Fed. R. Civ. P. 55(a). Applicant filed a response on September 2, 2004.[1] In her response, applicant informs the Board that she does not wish default judgment entered, that she was unaware of the need to respond, and that she needs information as to "what I can furnish you with regarding this matter." Accordingly, notice of default is set aside.

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[1] The delay in acting upon this matter is regretted. Applicant's response does not indicate proof of service of a copy of same on counsel for opposer as required by Trademark Rule 2.119 (which is more fully explained later in this order). In order to expedite this matter, a copy of said response is forwarded herewith to counsel for opposer, but strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

Because the Board is an administrative tribunal, its rules and procedures necessarily differ in some respects from those prevailing in the Federal district courts. Like a civil trial, a discovery period precedes the trial.[2] However, unlike a civil trial, the Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board, and the written transcripts thereof, together with any exhibits thereto, are then submitted to the Board. No paper, document, exhibit, etc. will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules. *See* Trademark Rule 2.123(l), and TBMP §717.

While U.S. Patent and Trademark Office Rule 10.14 permits any person to represent himself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with

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[2] Through the use of the various discovery devices (i.e., discovery depositions, interrogatories, requests for production of documents and things, and requests for admission) available to litigants in *inter partes* proceedings before the Board; a party may ascertain the facts underlying its adversary's case. TBMP §401. The conduct of discovery in Board *inter partes* proceedings is governed by Trademark Rule 2.120.

such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

In addition, applicant should note that Trademark Rule 2.119(a) and (b) require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of such service must be made before the paper will be considered by the Board. Consequently, copies of all papers which applicant may subsequently file in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof of service.[3]

Applicant is allowed until 30 days from the mailing date on this order to file a signed answer to the notice of opposition which complies with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Trademark Rule 2.116(a).

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[3] This written statement should take the form of a "certificate of service" which should read as follows: The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon opposer by forwarding said copy, via first class mail, postage prepaid to: [insert name and address]. The certificate of service must be signed and dated.

Rule 8(b) provides, in pertinent part:

> A party shall state in short and plain terms the party's defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If a party is without knowledge or information sufficient to form a belief as to the truth of an averment, the party shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. Wshen a pleader intends in good faith to deny only a part or a qualification of an averment, the pleader shall specify so much of it as is true and material and shall deny only the remainder.

The notice of opposition filed by opposer consists of 31 paragraphs setting forth the basis of opposer's claim of damage. In accordance with Fed. R. Civ. P. 8(b) it is incumbent on applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, she should so state and this will have the effect of a denial.

Applicant is advised that a paper filed in a proceeding before the Board should bear at its top the heading "IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD," followed by the name and number of the inter partes proceeding to which

it relates. The paper should also include a title describing its nature, e.g., "Answer." Every paper filed in an inter partes proceeding before the Board, must be personally signed by the party filing it, or by the party's attorney or other authorized representative, as appropriate. *See* Patent Rule 1.4(d); Trademark Rule 2.1 and 2.119(e); and Patent and Trademark Office Rule 10.18(a).

If applicant continues to act on her own behalf, it is strongly recommended that applicant refer to the Trademark Rules of Practice, and the Trademark Trial and Appeal Board Manual of Procedure (TBMP), both of which are available from the USPTO website, *www.uspto.gov*.

Discovery is open and the close of discovery and trial dates are set as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	July 15, 2005
30-day testimony period for party in position of plaintiff to close:	October 13, 2005
30-day testimony period for party in position of defendant to close:	December 12, 2005
15-day rebuttal testimony period to close:	January 26, 2006

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.

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.

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E-Government Initiatives at the Trademark Trial and Appeal Board:

TTAB forms for electronic filing are now available at http://estta.uspto.gov.

Images of TTAB proceeding files can be viewed using TTABVUE at http://ttabvue.uspto.gov.

Changes:

Parties should also be aware of changes in the rules affecting trademark matters, including rules of practice before the TTAB. *See* Rules of Practice for Trademark-Related Filings Under the Madrid Protocol Implementation Act, 68 Fed. R. 55,748 (September 26, 2003) (effective November 2, 2003) Reorganization of Correspondence and Other Provisions, 68 Fed. Reg. 48,286 (August 13, 2003) (effective September 12, 2003). Notices concerning the rules changes are available at www.uspto.gov.