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

Proceeding	91161535
Party	Defendant ROSENRUIST - GESTAO E SERVICOS SOCIEDADEUNIPESSOAL LDA ROSENRUIST - GESTAO E SERVICOS SOCIEDADE UNIPESSOAL LDA UNIPESSOAL LDA Rua do Esmeraldo, 8-10 PTX 9000-051 Funchal - Madeira,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

VIRGIN ENTERPRISES LIMITED, Opposer, v. ROSENRUIST- GESTAO E SERVICOS LDA, Applicant.	Opposition No. 91161535

REPLY TO OPPOSER'S OPPOSITION TO MOTION
FOR RECONSIDERATION OF DECISION ON MOTION

Opposer's comments in opposition to Applicant's motion for reconsideration are misplaced and appear instead to be more in the nature of an attempt to distract the Board from the relevant issues of review in this matter. At the heart of Trademark Rule 2.123(e)(e) is the following mandate: "[e]very adverse party shall have *full opportunity* to cross-examine each witness" (emphasis added). Granting Applicant's motion to strike the testimonial deposition of Neil Hobb is appropriate because Applicant did not have such full opportunity, having been given less than 24 hours notice of the deposition.

Applicant's motion for reconsideration points out certain legal errors and factual inaccuracies or assumptions forming the basis of the Board's initial decision.

Applicant's motion highlights the fact that Opposer served its initially defective notice after the close of business on a Friday afternoon to Applicant's counsel's office in Virginia during Applicant's counsel's harried travel back and forth between Washington, D.C. to New York City to attend Opposer's deliberately staggered depositions of five witnesses over five separate days spanning two consecutive weeks. Thus, Applicant emphasizes that while there

may have been 12 technical days notice of the initial defective notice, the practical effect of the notice was more like 8 or 9 days notice.

Opposer's argument that Applicant voiced no objection to the defective notice for eleven days - *even though the objected to deficiency appeared on the face of the deposition notice* - is specious. It could likewise be said that Opposer had eleven days notice of its own defective notice and failed to say anything about it or correct it until Applicant filed its objections. If anything, it is more likely that Opposer itself and its team of lawyers in this matter should have discovered the defectiveness of its own notice, rather than putting Applicant to that burden while traveling back and forth to Opposer's counsel's office over a two week period.

Opposer's claim that "Applicant deliberately delayed notifying Opposer of its objections with a view to attempting to exclude Opposer's trial testimony" is thus inaccurate, wholly unsupported and baseless. Rather, Applicant's motion for reconsideration advised that there were only two (2) days (including a Sunday) between the discovery of the indisputably defective notice and Opposer's filing of written objections to the indisputably defective notice. Opposer in its opposition does not dispute this fact.

Nor does Opposer dispute the fact that the matters noticed for deposition in the purported "corrected" notice were of a highly complex nature, as set forth in the motion for reconsideration.

Nor does Opposer dispute Applicant's explanations in the motion for reconsideration that the legal focus in determining whether objections are prompt is on the time between the discovery of the defective notice and the filing of written objections.

Opposer's comment in opposition that the Board correctly held that it immediately served a "corrected deposition notice" is without merit and irrelevant to this decision. The Board has

previously held that "twenty-four hours" is insufficient notice. *Jean Patou v. Theon Inc.*, 18 USPQ 2d 1072 (TTAB 1990).

Applicant's motion to strike should have been granted. Opposer's remedy, having been appraised of its indisputably defective notice upon discovery, would have been to immediately move the Board for an extension of time for the limited purpose of resetting the deposition made on defective notice, which it did not. Applicant submits that it is Opposer, not Applicant, that waived its remedy on this issue.

WHEREFORE, Applicant prays its motion be granted.

Respectfully submitted,

/Mark Lebow/

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October 17, 2006

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing Reply to Opposer's Opposition to Motion for Reconsideration of Decision on Motion was served by first class mail, postage prepaid, to James Dabney, Esq., Counsel for Opposer, Fried, Frank, Harris, Shriver, & Jacobson LLP, One New York Plaza, New York, New York 10004-1980 on this 17th day of October 2006.

/Mark Lebow/