



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

Spirit Airlines, Inc., )

Opposer )

v. )

Altair S.A.S., )

Applicant. )

Opposition No. 91173204

79/012,969

**MOTION FOR JUDGMENT**

Opposer, Spirit Airlines, Inc., pursuant to Fed.R.Civ. P. 37(b)(2) and Trademark Rule 2.120(g), requests that the Trademark Trial and Appeal Board (“Board”) enter judgment against Applicant because of Applicant’s willful and ongoing failure to respond to Opposer’s written discovery. Per the Board’s order dated September 25, 2007, Applicant’s full and complete responses to Opposer’s interrogatories and requests for production of documents were due on or before October 25, 2007. Applicant has failed to comply with the Board’s order. Opposer has received no responses to discovery and, Opposer has no reasonable basis for believing that responses will be forthcoming.

**I. Background**

On September 29, 2006, Opposer filed a Notice of Opposition with the Board, opposing registration of application Ser. No. 79/012,969 for the mark AIRSPIRIT.COM & Design (“AIRSPIRIT.COM”) for “air transport; arranging travel tours; making reservations and bookings for transportation,” in International Class 39. Opposition to registration of Applicant’s mark is based on its confusingly similarity to Opposer’s



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previously adopted, used and registered marks consisting or comprised of the mark SPIRIT as applied to air travel and related goods and services.

Opposer, on March 16, 2007, served Applicant with Opposer's First Set of Interrogatories; Opposer's First Set of Requests for Production of Documents and Materials; and Opposer's First Set of Requests for Admission (collectively "Opposer's discovery"). Applicant requested and secured two extensions of the deadline to respond to Opposer's discovery. Applicant's counsel advised that the extensions of time were necessary because of Applicant's inability to complete its responses in a timely manner. Applicant did not answer or otherwise respond to Opposer's discovery.

On July 5, 2007, Opposer filed a motion with the Board for an order compelling Applicant to respond to Opposer's discovery. The Board, on September 25, 2007, granted Opposer's motion and compelled Applicant to respond to Opposer's discovery by October 25, 2007.<sup>1</sup> Applicant has not provided Opposer with responses to discovery and is now in violation of the Board's order.

## II. Argument

Fed.R.Civ.P. 37(b)(2)(C) expressly provides for judgment by default if a party does not comply with a discovery order issued by the Board, including a motion to compel responses to discovery. MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG, 59 U.S.P.Q.2d 1477 (T.T.A.B. 2000). The Board, moreover, consistently recognizes the appropriateness of an entry of judgment in cases where no reasonable alternative exists and the defaulting party's failure to respond suggests "willfil

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<sup>1</sup> The Board's order granting Opposer's motion specifically compels Applicant to respond to Opposer's first set of interrogatories and requests for production of documents. Under T.B.M.P. § 407.03(a) Opposer's requests for admission are now deemed admitted.

evasion.” Unicut Corp. v. Unicut, Inc., 222 U.S.P.Q. 341 (T.T.A.B. 1984). Applicant’s responses to Opposer’s discovery are now almost five months overdue. Applicant, moreover, has made no attempt to contact Opposer to explain its failure to respond to Opposer’s discovery or otherwise to advise Opposer of Applicant’s intentions with respect to this proceeding; has not responded to Opposer’s Motion to Compel; and now has ignored the Board’s order requiring Applicant to respond to Opposer’s discovery. Applicant’s actions show a willful and deliberate disregard for its obligations to Opposer and of the Board’s order compelling responses to Opposer’s discovery. Applicant’s failure to act suggests that additional attempts to obtain responses to Opposer’s discovery would be fruitless. Hence, an order entering judgment in this case is warranted. Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co., 55 U.S.P.Q.2d 1848 (T.T.A.B. 2000).

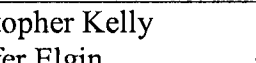
In view of the foregoing, Opposer requests that the Board enter judgment against Applicant and sustain Opposer’s notice of opposition.

In the event the Board denies Opposer's Motion, Opposer requests that the Board extend the close of discovery for a period of sixty days from the date of the Board's order.

Respectfully submitted,

SPIRIT AIRLINES, INC.

By: \_\_\_\_\_

  
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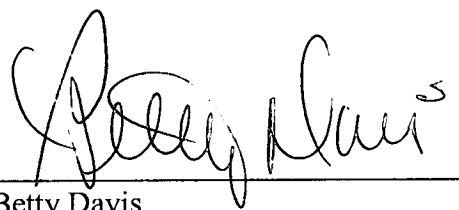
Attorneys for Spirit Airlines, Inc.

Dated: November 27, 2007  
12734784.1

**CERTIFICATE OF SERVICE**

I hereby certify that on this 27<sup>th</sup> day of November 2007, I served the foregoing **MOTION FOR JUDGMENT** by causing a copy thereof to be deposited in the United States mail, postage prepaid and addressed as follows:

Michael J. Bevilacqua  
Barbara A. Barakat  
Wilmer Cutler Pickering Hale and Dorr LLP  
60 State Street  
Boston, Massachusetts 02109

A handwritten signature in cursive script, appearing to read "Betty Davis", is written over a horizontal line. The signature is fluid and includes a small flourish at the end.

Betty Davis