

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

TTAB

TRIPLE FIVE SOUL]
INTERNATIONAL LLC,]
]
Opposer,]
]
v.]
]
BA&SH,]
]
Applicant.]
]

Opposition No. 91174167

76646493

BOX TTAB
NO FEE
The Assistant Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

MOTION FOR JUDGMENT ON THE PLEADINGS
(NO TESTIMONY BY OPPOSER)

Applicant, through its counsel, respectfully moves this Honorable Board to grant judgment to Applicant on the record, dismissing this Opposition pursuant to the provisions of 37 C.F.R. §2.132(a) for the reasons set forth below.

The testimony period for the Opposer, Cooperative for Assistance and Relief Everywhere, Inc., was set by the Board in its scheduling order of November 27, 2006, to close on September 13, 2007 and opening thirty days prior thereto. To date, neither the Applicant nor its attorneys have been

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09-18-2007

contacted by Opposer or its attorneys with respect to any intention on the part of Opposer to take testimony. Neither have Applicant's attorneys received any notice that testimony is contemplated or is to be taken. Opposer's testimony period is now over and it is too late for Opposer to now take such testimony.

Since the Opposer has the clear burden of proof in supporting and sustaining its opposition and since that burden cannot now be met by Opposer due to its failure to take any testimony within the allotted time to show that it has used the opposed mark or one similar thereto prior to Applicant's first date of use, it cannot prevail. Applicant has denied the principal allegations of the Notice of Opposition and it appears that no useful purpose would be served by continuing the Opposition. Dismissal is therefore requested.

Respectfully submitted,


September 18, 2007



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CERTIFICATE OF SERVICE

This is to certify that a copy of Applicant's Motion for Judgment was served upon counsel for Opposer by depositing a copy thereof in the United States mail with proper postage affixed this 18st day of September, 2007, addressed to counsel for Opposer, Richard L. Herzfeld, Esq., c/o Bahn, Herzfeld & Multer, 555 Fifth Avenue, 14th Floor, New York, NY 10017.



Donald L. Dennison