

ESTTA Tracking number: **ESTTA129372**

Filing date: **03/12/2007**

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

Proceeding	91174787
Party	Defendant B.J. Alan Company B.J. Alan Company 555 Martin Luther King, Jr. Blvd. Youngstown, OH 445021102 Waweimer@fireworks.com
Correspondence Address	WILLIAM A. WEIMER B.J. ALAN COMPANY 555 MARTIN LUTHER KING JR BLVD YOUNGSTOWN, OH 44502-1102 UNITED STATES Waweimer@fireworks.com
Submission	Response to Board Order/Inquiry
Filer's Name	Ronni S. Jillions
Filer's e-mail	mail@browdyneimark.com, rsjillions@browdyneimark.com, adonofrio@fireworks.com
Signature	/Ronni S. Jillions/
Date	03/12/2007
Attachments	2007-03-12 Response to Default.pdf (4 pages)(82097 bytes)

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

-----X		
NEW LINE PRODUCTIONS, INC.	:	
	:	
Opposer,	:	Opposition No. 91174787
	:	Serial No. 78/736,828
v.	:	
	:	
B.J. ALAN COMPANY	:	
	:	
Applicant.	:	
-----X		

RESPONSE TO NOTICE OF DEFAULT

Now comes Applicant, by and through undersigned counsel, and hereby moves this Honorable Trial and Appeal Board for cause, to allow Applicant to respond to Opposer’s Notice of Opposition filed herein on December 22, 2006, in response to the Notice of Default mailed on February 20, 2007.

For cause, Counsel for Applicant states that he has been engaged in ongoing negotiations with Counsel for Opposer to resolve the instant matter. Counsel for Applicant has had telephone communication, as well as e-mail communication with Counsel for Opposer in furtherance of settlement negotiations.

On Thursday, December 21, 2006, immediately prior to the expiration time within which to file its notice of opposition, Counsel for Opposer e-mailed Counsel for Applicant, and stated as follows:

Opposition No. 91174787
Response to Notice of Default

“As you are no doubt aware, tomorrow is our last deadline to file an opposition against your SHAGADELIC MOJO mark. Last we spoke, you were inquiring as to whether the product’s “natural life span” would be coming to an end. Please let us know what you found out. In the meantime, we will have to file the opposition tomorrow to preserve our client’s rights. Of course, we are still open to discussing a possible settlement of this matter. I look forward to hearing back from you.”

On that same day, Counsel for Applicant e-mailed Counsel for Opposer and specifically responded to the information requested. In addition, Counsel for Applicant suggested a settlement proposal , with a request for a response to the proposal. Counsel for Opposer did not respond. Counsel for Applicant has been acting under the belief that Counsel for Opposer was acting in good faith in her assertions that “we are still open to discussing a possible settlement of this matter.” Counsel for Applicant is not suggesting that Counsel for Opposer is acting in bad faith. However, Counsel for Applicant was lulled into thinking that this matter could be resolved summarily, without the necessity of Trial and Appeals Board proceedings. Therefore, Counsel for Applicant inadvertently missed the deadline for filing a response to Opposer’s notice of opposition.

The delay in filing an answer to Opposer’s notice of Opposition was not the result of willful conduct or gross neglect on the part of Counsel for Applicant, but an inadvertent oversight on the part of Counsel for Applicant. In addition, the Opposer will not be prejudiced by the delay in filing a response by Applicant, and Applicant has a meritorious defense to the action as set forth in the Answer to the Notice of Opposition and Counterclaims filed on even date herewith.

Opposition No. 91174787
Response to Notice of Default

On March 9, 2007, Counsel for Applicant contacted Counsel for Opposer to discuss whether they would oppose the late-filing of the Answer/Counterclaim. On March 12, 2007, Counsel for Opposer indicated that they would respond in the next few days. However, to preserve Applicant's rights, Applicant filed its motion today, without waiting for their reply. Counsel for Applicant informed Counsel for Opposer of the necessity for filing today by telephone.

WHEREFORE, for the foregoing reasons, Applicant respectfully requests that the United States Patent and Trademark Office Trial and Appeal Board allow Applicant the opportunity to file an answer to Opposer's notice of opposition filed herein, and be given the opportunity to defend said opposition.

Dated: March 12, 2007

Respectfully requested,

/Anthony Donofrio/
Mr. Anthony Donofrio
Deputy General Counsel
B.J. Alan Company
555 Martin Luther King, Jr. Blvd.
Youngstown, Ohio 44502-1102

/Ronni S. Jillions/
Ms. Ronni S. Jillions
BROWDY AND NEIMARK, P.L.L.C.
624 Ninth Street, N.W.
Suite 300
Washington, DC 20001-5303
Telephone: (202) 628-5197
Facsimile: (202) 737-3528

Attorneys for Applicant

CERTIFICATE OF ONLINE FILING

I hereby certify that the foregoing was submitted to the Trademark Trial and Appeal Board, via the on-line filing system on the USPTO website, on this 12th day of March 2007.

/Ronni S. Jillions/
Ronni S. Jillions

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Answer to Notice of Opposition and Counterclaim was delivered via First Class Mail, addressed to counsel for Opposer, Ms. Erin S. Hennessy, Time Warner, Inc., One Time Warner Center, 14th Floor, New York, New York, 10019, on this 12th day of March 2007.

/Ronni S. Jillions/
Ronni S. Jillions