

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

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Mailed: May 16, 2008

Opposition No. 91183234

Ocean Minded, Inc.

v.

Rene Aguirre

Before Bucher, Kuhlke, and Bergsman,
Administrative Trademark Judges.

By the Board:

This case now comes up for consideration of applicant's motion (filed March 28, 2008) to dismiss this proceeding on the ground that opposer's filing of its notice of opposition was untimely.¹ The motion is fully briefed.

In support of the motion, applicant claims that application Serial No. 78910705, the subject application to this proceeding, was published for opposition on February 26, 2008 and that opposer filed its notice of opposition on March 27, 2008. Applicant further notes that the year 2008 is a

¹The Board notes that applicant's motion to dismiss does not demonstrate proof of service of the same upon opposer as required by Trademark Rule 2.119. In order to expedite matters, a copy of applicant's motion is forwarded to opposer with a copy of the instant order. Notwithstanding the foregoing, strict compliance with Trademark Rule 2.119 is required by applicant in all future papers filed with the Board.

leap year and the month of February has 29 days. Accordingly, applicant contends that since the total number of days, including the date of publication, spanned thirty one days, opposer's filing was untimely inasmuch as it exceeded the allowable 30 days in which to file an opposition and, therefore, the opposition should be dismissed.

In opposition, opposer argues that it did, in fact, timely file its notice of opposition in this matter. Opposer notes that, pursuant to Trademark Rule 2.101, a notice of opposition must be filed within thirty days after the publication date of an application. Given that applicant's application was published for opposition on February 26, 2008, opposer contends that its notice of opposition was timely filed on March 27, 2008 in that it was filed thirty days after publication.

Contrary to applicant's contentions, the Board notes that, when calculating the time in which to file a notice of opposition, the actual date of publication is not included in the thirty day period. Indeed, Trademark Rule 2.101(c) states, in pertinent part, that an "opposition must be filed within thirty days after publication of the application being opposed" (emphasis added). Inasmuch as opposer filed its notice of opposition within thirty days after the actual publication date, opposer's filing is timely.

Accordingly, applicant's motion to dismiss is denied.

In view thereof, applicant is allowed **twenty days** from the mailing date of this order in which to file an answer to the notice of opposition, failing which the Board may issue a notice of default.

Discovery, conferencing, disclosure and trial dates are reset as follows:

Time to Answer	6/5/2008
Deadline for Discovery Conference	7/5/2008
Discovery Opens	7/5/2008
Initial Disclosures Due	8/4/2008
Expert Disclosures Due	12/2/2008
Discovery Closes	1/1/2009
Plaintiff's Pretrial Disclosures	2/15/2009
Plaintiff's 30-day Trial Period Ends	4/1/2009
Defendant's Pretrial Disclosures	4/16/2009
Defendant's 30-day Trial Period Ends	5/31/2009
Plaintiff's Rebuttal Disclosures	6/15/2009
Plaintiff's 15-day Rebuttal Period Ends	7/15/2009

Information regarding pro se representation:

In this proceeding, all parties are expected to comply with the applicable rules and Board practices. Trademark Rule 10.14 permits any person or legal entity to represent itself in a Board proceeding, though it is strongly advised that those unfamiliar with the applicable rules secure the services of an attorney familiar with such matters.

The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil

Procedure govern various aspects of this proceeding. The Trademark Trial and Appeal Board Manual of Procedure (TBMP) is also helpful. Any party not represented by counsel is charged to be familiar with and to adhere to the rules governing this proceeding. The Trademark Rules are codified in Part Two of Title 37 of the Code of Federal Regulations (CFR). The CFR and the Federal Rules of Civil Procedure are often available at law libraries and at some public libraries. Some of these materials are available free of charge at the USPTO website: <http://www.uspto.gov>. The first revision of the second edition (March 2004) of the aforementioned TBMP is posted on the USPTO web site at: <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/> <http://www.uspto.gov/web/offices/dcom/ttab/tbmp/>.

The parties are directed to pay particular attention to Trademark Rule 2.119, which requires a party filing any motion or correspondence with the Board to serve a copy on its adversary, unless the adversary is represented by counsel, in which case, the copy must be served on the adversary's counsel. The party filing the paper must include "proof of service" of the copy. "Proof of service" usually consists of a signed, dated statement attesting to: (1) the nature of the paper being served; (2) the method of service (e.g., first class mail, email); (3) the person being served and the address used to effect service; and (4) the date of service.

All correspondence and motions must be received by the Patent and Trademark Office by the due date therefor, unless one of the filing procedures set forth in Trademark Rules 2.197 or 2.198 is utilized.

Files of TTAB proceedings can be examined using TTABVue, accessible at <http://ttabvue.uspto.gov>. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that entry in PDF format.

NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>