

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

Baxley

Mailed: July 25, 2011

Opposition No. 91187204

Nathaniel Christian

v.

Tim Bernardy

By the Trademark Trial and Appeal Board:

On June 1, 2011, the Board sent an order to show cause under Trademark Rule 2.128(a)(3) regarding opposer's failure to file a brief on the case. In response thereto, opposer filed his brief on the case and trial evidence.¹ The Board finds that such filing is sufficient to indicate that opposer has not lost interest in this case and therefore sets aside the order to show cause. See TBMP Section 536 (3d ed. 2011).

Nonetheless, pursuant to the Board's May 19, 2010 order, opposer's brief on the case was due by May 13, 2011. opposer has not accompanied his response to the order to show cause with a motion to reopen his time in which to file his brief and has otherwise made no showing that his failure to timely

¹ Although opposer had been represented by counsel throughout this proceeding, he filed his brief on the case *pro se*. However, his attorney did not withdraw from this case, and opposer did not amend his correspondence address in his brief. See TBMP Sections 117.01 and 513 (3d ed. 2011). Accordingly, opposer's copy of this order has been sent to opposer's attorney of record.

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file that brief was the result of excusable neglect. See *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993); *Pumpkin, Ltd. v. The Seed Corps*, 43 USPQ2d 1582 (TTAB 1997), Fed. R. Civ. P. 6(b)(1)(B); TBMP Section 536. Accordingly, opposer's brief on the case will receive no consideration.

The Board further notes that opposer did not file any evidence or take any testimony during his testimony period. Although opposer included evidence as exhibits to his brief on the case, opposer may not use that brief as a means of introducing evidence herein. See TBMP Sections 704.05(b) and 801.01. Accordingly, the evidence submitted with opposer's brief is not properly before the Board and therefore will receive no consideration.

All testimony periods have expired, and opposer has neither taken testimony nor submitted admissible evidence during his testimony period. However, opposer submitted evidence by filing a status and title copy obtained from the USPTO's Trademark Applications and Registrations Retrieval (TARR) database of pleaded Registration No. 2832242 as an exhibit to the notice of opposition. See Trademark Rule 2.122(d)(1).

On the other hand, applicant did not submit evidence and does not appear to have taken testimony during his testimony period as plaintiff in the counterclaim. See *id.*

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Accordingly, applicant is allowed until thirty days from the mailing date set forth in this order to show cause why the counterclaim should not be dismissed based on his failure to prosecute. See Trademark Rule 2.132(a).

Proceedings herein otherwise remain suspended.