

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

Winter/tdc

Mailed: May 14, 2010

Opposition No. 91191924

Dr. Babor GmbH & Co. KG

v.

Appolos, Inc.

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Proposed Amendment to Opposed Application

On March 25, 2010, applicant filed a proposed amendment to its application Serial No. 77265407. The motion was not accompanied by proof of service of the proposed amendment on opposer's counsel, as required under Trademark Rule 2.119, 37 C.F.R. § 2.119. However, the Board notes opposer's consented motion (filed April 26, 2010) to extend the trial schedule by thirty days,¹ and notes further that said motion references applicant's proposed amendment. The Board construes said motion as proof that opposer was notified of

¹ While the Board attempts, where possible, to notify the parties of its decision on a consented motion to suspend or to extend time prior to expiration of the enlargement sought, the Board is under no obligation to do so, and in many cases cannot. See *Chesebrough-Pond's Inc. v. Faberge, Inc.*, 618 F.2d 776, 205 USPQ 888 (CCPA 1980). Therefore, it is preferable, that a motion to extend or to suspend request that the new period or periods be set to run from the date of the Board's decision on the motion.

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the filing of the proposed amendment and that opposer consents to said amendment.

By the proposed amendment, applicant seeks to change the identification of goods **from:** "Cosmetic products, namely, lotions for skin, anti-wrinkle creams, skin moisturizers, facial scrubs, lipsticks, lip balms, shower gels, soaps, shampoos, hair conditioners, liquid soap for hands and facial cleansing lotions," **to:**² "Cosmetic products, namely shampoos and hair conditioners."

Inasmuch as the amendment is clearly limiting in nature as required by Trademark Rule 2.71(a), and because opposer consents thereto, it is approved and entered. See Trademark Rule 2.133(a).

If this amendment resolves the dispute herein, opposer is allowed until THIRTY DAYS from the mailing date of this order to file a withdrawal of the opposition, failing which the opposition will go forward on the application as amended and on the trial schedule set forth at the close of this order. See Trademark Rule 2.106(c).

Opposer's Motions to Suspend and to Extend Time

The Board also notes opposer's consented motion (filed March 25, 2010) to suspend this proceeding for thirty days pending the parties' settlement discussions and opposer's

² The following wording is deleted from the identification of goods: lotions for skin, anti-wrinkle creams, skin moisturizers, facial scrubs, lipsticks, lip balms, shower gels, soaps, liquid soap for hands and facial cleansing lotions.

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consent motion (filed April 26, 2010) referenced above. In each case, opposer failed to provide proof of service of its motions upon applicant, as required by Trademark Rule 2.119, 37 C.F.R. 2.119. Nonetheless, inasmuch as the proposed amendment was submitted by applicant in accordance with the parties' settlement of this matter, and to expedite matters, a copy of opposer's motions will be forwarded to applicant along with this order. **Strict compliance with the Trademark Rules is expected in future submissions to the Board.**

In view of the foregoing, opposer's motions to suspend and to extend time are granted. See TBMP § 605.02 (2d ed. rev. 2004). Accordingly, this proceeding is suspended through **June 13, 2010**. See Trademark Rule 2.117(c), 37 C.F.R. § 2.117(c). Should opposer not respond to this order, this proceeding shall resume on the following schedule:

Proceeding Resumes	6/14/2010
Initial Disclosures Due	6/14/2010
Expert Disclosures Due	11/11/2010
Discovery Closes	12/11/2010
Plaintiff's Pretrial Disclosures	1/25/2011
Plaintiff's 30-day Trial Period Ends	3/11/2011
Defendant's Pretrial Disclosures	3/26/2011
Defendant's 30-day Trial Period Ends	5/10/2011
Plaintiff's Rebuttal Disclosures	5/25/2011
Plaintiff's 15-day Rebuttal Period Ends	6/24/2011

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits,

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must be served on the adverse party **WITHIN THIRTY DAYS** after completion of the taking of testimony. See Trademark Rule 2.125, 37 C.F.R. § 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b), 37 C.F.R. §§ 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129, 37 C.F.R. § 2.129.

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