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

Proceeding	91197856
Party	Defendant American Beer Company, Inc.
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Attachments	American Beer Reply.pdf (3 pages)(20487 bytes)

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

T-D Innovations, LLC)
Opposer,)
v.) Opposition No. 91197856
American Beer Company, Inc.)
Applicant.)
_____)

**APPLICANT’S REPLY IN SUPPORT OF APPLICANT’S
MOTION TO DISMISS**

In its Response to Applicant’s Motion to Dismiss, Opposer admits that it did not serve the Notice of Opposition on Applicant’s attorney as required by 37 C.F.R. § 2.119(b). Rather, Opposer served Applicant directly via first-class mail. Nevertheless, Opposer argues that Applicant’s attorney received actual notice of the opposition proceeding via his client and alleges that Applicant’s attorney “received actual notice of the Notice of Opposition within the required time period.”

Needless to say, Opposer is without first-hand knowledge of how or when Applicant’s attorney learned that a Notice of Opposition had been filed. There are a multitude of ways in which Applicant’s attorney could have received such notice and it certainly is not a fact that Applicant’s attorney received such notice prior to the expiration of the opposition period on December 30, 2010.

Furthermore, Opposer argues without citation to relevant authority that “[c]ase law supports service in a timely manner on an authorized representative of the party being opposed.” However, the notice of opposition must be served on the attorney of record for the applicant at

the correspondence address of record in the office. 37 C.F.R. § 2.101(b). Without question, Opposer failed to serve Applicant's attorney.

Finally, the Board has clearly stated that it "will not institute an opposition or cancellation where there is no proof of service, even though there may have been actual service." *Springfield, Inc. v. XD*, Opposition No. 91180596, p. 3, fn. 3 (February 7, 2008) [precedential]. In this case, the Notice of Opposition did not include proof of service on Applicant's attorney, nor was there actual service by Opposer on Applicant's attorney.

CONCLUSION

In sum, Opposer's Notice of Opposition was not properly served upon Applicant's attorney during the publication period and it failed to include any proof of service upon Applicant's attorney whatsoever. Therefore, Applicant respectfully requests that the Board dismiss Opposer's Notice of Opposition with prejudice for insufficient service of process.

Respectfully submitted,

AMERICAN BEER COMPANY, INC.

By: _____/met20/

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Dated: _____ 3/10/2011 _____

