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Filing date: **10/05/2015**

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

Proceeding	91219403
Party	Plaintiff Margaritaville Enterprises, LLC
Correspondence Address	JOEL R FELDMAN GREENBERG TRAUIG LLP 3333 PIEDMONT RD NE, TERMINUS 200 SUITE 2500 ATLANTA, GA 30305 UNITED STATES atltrademark@gtlaw.com, feldmanjoel@gtlaw.com
Submission	Opposition/Response to Motion
Filer's Name	Joel R. Feldman
Filer's e-mail	atltrademark@gtlaw.com, feldmanjoel@gtlaw.com
Signature	/jrf/
Date	10/05/2015
Attachments	Response Brief (Marijuanaville).pdf(405546 bytes )

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

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<b>MARGARITAVILLE</b>	)	)
<b>ENTERPRISES, LLC,</b>	)	)
	)	)
<b>Opposer,</b>	)	)
	)	)
<b>v.</b>	)	<b>Opposition No. 91219403 (parent)</b>
	)	<b>91221395</b>
<b>RACHEL A. BEVIS,</b>	)	
	)	
<b>Applicant.</b>	)	
<hr/>		)

**OPPOSITION TO APPLICANT’S MOTION TO COMPEL,  
MOTION TO STRIKE APPLICANT’S MOTION TO COMPEL,  
AND MOTION FOR SANCTIONS**

**INTRODUCTION**

On November 19, 2014, Opposer Margaritaville Enterprises, LLC (“Margaritaville”) filed a notice of opposition against Applicant Rachel Bevis’ Trademark Application Serial No. 86/293,056 for MARIJUANAVILLE in International Class 25. On April 7, 2015, Margaritaville filed a notice of opposition against Applicant Rachel Bevis’ Trademark Application Serial No. 86/346,860 for MARIJUANAVILLE in International Class 35. The oppositions are based on Margaritaville’s long-standing rights in the mark MARGARITAVILLE for clothing and retail stores. On June 11, 2015, the Board consolidated Trademark Opposition Nos. 91219403 and 91221395 (the “Consolidated Opposition”).

On August 3, 2015, Applicant Rachel Bevis filed a motion to dismiss the Consolidated Opposition. On August 17, 2015, the Board denied Applicant’s motion to dismiss, stating that Applicant’s motion “fails to set forth a basis upon which relief could be granted.”

On September 29, 2015, Applicant Rachel Bevis filed a motion to compel (the “Motion”).<sup>1</sup> Margaritaville opposes this Motion and requests that portions of the Motion be struck. Margaritaville further moves for sanctions to prevent Applicant’s further filing of improper and dilatory motions

**APPLICANT’S MOTION TO COMPEL**

In the Motion, Applicant states “I Rachel Bevis as of 09/29/2015 have not received the plaintiff’s pretrial disclosure, which was due on 09/15/2015. The format of all filing was set forth and required by the USPTO. These requirements have not been fulfilled by the opposition’s obligation.”

The operative scheduling order in the Consolidated Opposition was issued on June 11, 2015. Under the operative scheduling order, discovery closes on October 15, 2015 and Margaritaville’s Pretrial Disclosures are due November 29, 2015.<sup>2</sup> Therefore, Applicant’s Motion is premature and should be summarily denied.

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<sup>1</sup> As of the date of the filing of this response, Margaritaville has not received a service copy of Applicant’s “Motion to compel.” The Certificate of Service contains multiple typographical errors and does not contain a suite number. As set forth on TTABVUE, Margaritaville’s counsel’s mailing address is:

JOEL R FELDMAN  
GREENBERG TRAURIG LLP  
3333 PIEDMONT RD NE, TERMINUS 200 SUITE 2500  
ATLANTA, GA 30305

<sup>2</sup> Applicant may have been referring to the September 15, 2015 deadline for Expert Disclosures. TBMP Section 408.01(b) states, in pertinent part, “***In the event a party decides to use expert testimony in a Board proceeding***, pursuant to Fed. R. Civ. P. 26(a)(2), the party must serve expert disclosures 30 days prior to the close of discovery” (emphasis added). Margaritaville is not obligated to use expert testimony in this proceeding and Margaritaville has elected not to use expert testimony. Therefore, Margaritaville is not obligated to serve a null set of expert disclosures. Moreover, the Expert Disclosures deadline is mutual. To the extent that Applicant mistakenly believed that Expert Disclosures were mandatory rather than optional and due on September 15, 2015, Applicant did not serve any Expert Disclosures. This is further evidence of the dilatory and disingenuous nature of Applicant’s Motion.

### **MOTION TO STRIKE**

In her motion, Applicant states “This is not the first but the second time that the deadline requirements have not been met.” Assuming Applicant is not referring to her failure to serve initial disclosures in Opposition No. 91221395,<sup>3</sup> there is no factual basis for this allegation against Margaritaville. Given the potentially-prejudicial nature of this allegation in the opposition proceedings, Margaritaville requests that the Board strike the portion of the Motion falsely alleging that Margaritaville previously failed to meet a deadline in the Consolidated Opposition.

### **REQUEST FOR SANCTIONS**

Applicant previously filed an untenable motion to dismiss. She has now filed an untenable motion to compel. By filing meritless motions, Applicant has unnecessarily delayed this proceeding and increased the litigation costs to both parties. In addition, the Board’s resources are being wasted by having to rule on dilatory motions.

Because Applicant appears to misunderstand Board practice and procedure, Margaritaville requests that the Board enact sanctions to closely manage the defense of the proceedings. Specifically, Margaritaville requests that Applicant be required to secure permission from the appropriate interlocutory attorney by telephone before filing any unconsented or unstipulated motion in the Consolidated Opposition. *See Schering-Plough Animal Health Corp. v. Aqua Gen As.*, 90 USPQ2d 1184, 1185 (TTAB 2009) (enacting an identical sanction in response to a meritless motion to dismiss); *International Finance Corp. v.*

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<sup>3</sup> Despite repeated requests from Margaritaville, as of the date of the filing of this response, Margaritaville has not received initial disclosures from Applicant in Opposition No. 91221395. *See* Exhibit 1.

*Bravo Co.*, 64 USPQ2d 1597, 1604 n.23 (TTAB 2002) (Board prohibited opposer from filing any further motions to compel without prior Board permission).

**CONCLUSION**

Applicant has not presented any valid basis for the Board to compel Margaritaville to act. Therefore, Margaritaville respectfully requests that the Board deny Applicant's motion to compel. Margaritaville further respectfully requests that the Board provide relief to Margaritaville by striking the clearly-erroneous portion of Applicant's motion to compel and sanctioning Applicant to prevent the further filing of dilatory motions.

Respectfully submitted,  
**GREENBERG TRAURIG LLP**



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Joel R. Feldman, Esq.  
Jacquelynne J. Regan, Esq.


Terminus 200  
3333 Piedmont Road, NE  
Suite 2500  
Atlanta, Georgia 30305  
Phone: (678) 553-4778  
Fax: (678) 553-4779

*Attorneys for Opposer  
Margaritaville Enterprises, LLC*

**CERTIFICATE OF ELECTRONIC TRANSMISSION**

Date: October 5, 2015


I certify that this Opposition to Applicant's Motion to Dismiss is being transmitted electronically to the Trademark Trial and Appeal Board of the United States Patent & Trademark Office, on the date indicated above, through the ESTTA electronic filing system at the web site <http://estta.uspto.gov/>.

By:   
Joel R. Feldman, Esq.

**CERTIFICATE OF SERVICE**

I certify that on October 5, 2015 I served this Opposition to Applicant's Motion to Dismiss by Certified U.S. Mail to:

Rachel A. Bevis  
18110 E. Bethany Place  
Aurora, CO 80013-6460

By:   
Joel R. Feldman, Esq.

# **Exhibit 1**

## Feldman, Joel (Shld-Atl-Ent-IP-Tech)

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**From:** feldmanjoel@gtlaw.com  
**Sent:** Wednesday, July 22, 2015 11:00 AM  
**To:** rcovel1013@comcast.net  
**Subject:** Registered: Margaritaville Enterprises, LLC v. Rachel Bevis, TTAB Opposition No. 91221395 (Marijuanaville)

**Importance:** High



**REGISTERED EMAIL**  
CERTIFIED DELIVERY, CONTENT & TIME



This is a Registered Email® message from [feldmanjoel@gtlaw.com](mailto:feldmanjoel@gtlaw.com).

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Dear Ms. Bevis,

I am writing to follow up regarding your initial disclosures in TTAB Opposition No. 91221395. Initial disclosures were due, by certified U.S. mail or by courier, on or before July 17, 2015. I have not yet received your initial disclosures. If you sent them, and I did not receive them, please provide the USPS, UPS, or FedEx tracking information.

Sincerely,  
Joel Feldman

Joel R. Feldman  
Shareholder  
Greenberg Traurig, LLP | Terminus 200  
3333 Piedmont Road NE | Suite 2500 | Atlanta, GA 30305  
Tel 678-553-4778 | Fax 678-553-4779  
[feldmanjoel@gtlaw.com](mailto:feldmanjoel@gtlaw.com) | [www.gtlaw.com](http://www.gtlaw.com)



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## **Feldman, Joel (Shld-Atl-Ent-IP-Tech)**

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**From:** Feldman, Joel (Shld-Atl-Ent-IP-Tech)  
**Sent:** Thursday, July 23, 2015 10:25 AM  
**To:** rcovel1013@comcast.net  
**Subject:** RE: Registered: Margaritaville Enterprises, LLC v. Rachel Bevis, TTAB Opposition No. 91221395 (Marijuanaville)

Dear Ms. Bevis,

I am sorry to hear about your grandmother. Please let me know if you would like to discuss a suspension of the proceedings so that you can tend to her.

With respect to the initial disclosures, I never received them. Can you please resend them by certified mail?

Sincerely,  
Joel Feldman

Joel R. Feldman | Tel 678-553-4778 | [feldmanjoel@gtlaw.com](mailto:feldmanjoel@gtlaw.com)

-----Original Message-----

From: [rcovel1013@comcast.net](mailto:rcovel1013@comcast.net) [<mailto:rcovel1013@comcast.net>]  
Sent: Thursday, July 23, 2015 10:23 AM  
To: Feldman, Joel (Shld-Atl-Ent-IP-Tech)  
Subject: Re: Registered: Margaritaville Enterprises, LLC v. Rachel Bevis, TTAB Opposition No. 91221395 (Marijuanaville)

----- Original Message -----

From: [feldmanjoel@gtlaw.com](mailto:feldmanjoel@gtlaw.com)  
To: [rcovel1013@comcast.net](mailto:rcovel1013@comcast.net)  
Sent: Wed, 22 Jul 2015 15:00:28 -0000 (UTC)  
Subject: Registered: Margaritaville Enterprises, LLC v. Rachel Bevis, TTAB Opposition No. 91221395 (Marijuanaville) I sent them out a few days after, I received them you should have them. Rachel Bevis I was out of town, Grandma not well in Chicago, The post office could not find package. Sent them within 2 days. Thank you, Rachel

Dear Ms. Bevis,

I am writing to follow up regarding your initial disclosures in TTAB Opposition No. 91221395. Initial disclosures were due, by certified U.S. mail or by courier, on or before July 17, 2015. I have not yet received your initial disclosures. If you sent them, and I did not receive them, please provide the USPS, UPS, or FedEx tracking information.

Sincerely,  
Joel Feldman

Joel R. Feldman  
Shareholder  
Greenberg Traurig, LLP | Terminus 200  
3333 Piedmont Road NE | Suite 2500 | Atlanta, GA 30305 Tel 678-553-4778 | Fax 678-553-4779  
[feldmanjoel@gtlaw.com](mailto:feldmanjoel@gtlaw.com)<<mailto:feldmanjoel@gtlaw.com>> | [www.gtlaw.com](http://www.gtlaw.com)<<http://www.gtlaw.com>>

## **Feldman, Joel (Shld-Atl-Ent-IP-Tech)**

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**From:** Feldman, Joel (Shld-Atl-Ent-IP-Tech)  
**Sent:** Tuesday, July 28, 2015 2:45 PM  
**To:** rcovel1013@comcast.net  
**Subject:** RE: Marijuanaville settlement agreement

Dear Ms. Bevis,

I'm very disappointed to hear that. As I'm sure you understand, as this opposition moves forward and Margaritaville incurs additional attorneys' fees, Margaritaville will be unwilling to pay you any money in a future settlement.

Your obligations regarding initial disclosures are set forth in Trademark Board Manual of Procedure 401.02, which you can find here: [http://www.uspto.gov/trademarks/process/appeal/Chapter\\_400.pdf](http://www.uspto.gov/trademarks/process/appeal/Chapter_400.pdf). As a reminder, the Board issued an order on June 11, 2015 stating that "Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel."

Sincerely,  
Joel Feldman

Joel R. Feldman | Tel 678-553-4778 | [feldmanjoel@qtlaw.com](mailto:feldmanjoel@qtlaw.com)

-----Original Message-----

From: [rcovel1013@comcast.net](mailto:rcovel1013@comcast.net) [<mailto:rcovel1013@comcast.net>]  
Sent: Tuesday, July 28, 2015 11:34 AM  
To: Feldman, Joel (Shld-Atl-Ent-IP-Tech)  
Subject: RE: Marijuanaville settlement agreement

----- Original Message -----

From: [feldmanjoel@qtlaw.com](mailto:feldmanjoel@qtlaw.com)  
To: [rcovel1013@comcast.net](mailto:rcovel1013@comcast.net)  
Sent: Mon, 27 Jul 2015 13:58:23 -0000 (UTC)  
Subject: RE: Marijuanaville settlement agreement

Dear Ms. Bevis,

Mr. Feldman, After reviewing the settlement agreement, Mr Madigan and I feel at this time we would like to proceed with the process. I have still not have the questions that were due to USPTOs time line on July 27th. please send them. Thank you, Rachel Bevis In response to our telephone call this morning, I've attached a revised Settlement Agreement for you to sign. I've also re-attached the W-9 for you to complete for EFM RAM LLC.

Please let me know if you have any questions.

Sincerely,  
Joel Feldman

Joel R. Feldman | Tel 678-553-4778 | [feldmanjoel@qtlaw.com](mailto:feldmanjoel@qtlaw.com)<<mailto:feldmanjoel@qtlaw.com>>

From: Feldman, Joel (Shld-Atl-Ent-IP-Tech)  
Sent: Friday, July 24, 2015 4:41 PM  
To: [rcovel1013@comcast.net](mailto:rcovel1013@comcast.net)

Subject: Marijuanaville settlement agreement  
Importance: High

Dear Ms. Bevis,

Margaritaville has agreed to make a \$12,000 charitable contribution to Columbine High School in exchange for your complete abandonment of Marijuanaville, as we previously discussed. I've attached a draft settlement agreement for you to review. If it is acceptable, please sign and date page 4, and return it to me for countersignature.

In order to make the payment to Columbine High School, I will need Columbine High School to complete the attached W-9 form.

Please let me know if you have any questions.

Sincerely,  
Joel

Joel R. Feldman  
Shareholder  
Greenberg Traurig, LLP | Terminus 200  
3333 Piedmont Road NE | Suite 2500 | Atlanta, GA 30305 Tel 678-553-4778 | Fax 678-553-4779  
[feldmanjoel@gtlaw.com](mailto:feldmanjoel@gtlaw.com) <<mailto:feldmanjoel@gtlaw.com>> | [www.gtlaw.com](http://www.gtlaw.com/) <<http://www.gtlaw.com/>>

[Greenberg Traurig]

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