

ESTTA Tracking number: **ESTTA802458**

Filing date: **02/20/2017**

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

Proceeding	91219631
Party	Plaintiff Meeshaa Inc., dba Diamond Essence
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Submission	Reply in Support of Motion
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Date	02/20/2017
Attachments	OPPOSERS_REPLY_20170220.pdf(135099 bytes )

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

_____		)	
Meeshaa Inc.,		)	
dba Diamond Essence,		)	
	Opposer,	)	
	v.	)	Opposition No. 91219631
Anaya Gems Inc.,		)	
	Applicant.	)	
_____		)	

OPPOSER'S REPLY TO APPLICANT'S OPPOSITION  
TO MOTION TO STRIKE

Applicant continues to flout the trademark rules, ignore the law, and cause unnecessary and otherwise avoidable delay and expenditure of the Board's resources. Applicant's opposition was untimely filed, improperly served, unaccompanied by a motion to reopen the time for opposing the motion to strike and fails to show excusable neglect.

Opposition Untimely Filed

Opposer's motion to strike was filed December 26, 2016 and Applicant's opposition to the motion was due 20 days later, i.e., January 16, 2017 (January 15 being a Sunday). Applicant filed its opposition on February 8, 2017, 23 days late. No reason was given by Applicant for the late filing of its opposition.

**Opposition Improperly Served**

Pursuant to Trademark Rule 2.119, as amended, service of all papers in inter partes proceedings before the Board "must be made by email" unless otherwise stipulated or if service by email was attempted but could not be made due to technical problems or extraordinary circumstances. Applicant served its opposition by first-class mail without any written explanation showing that email service could not be made.

**Applicant Failed to Move to Reopen  
Period to File Opposition**

In order for the Board to consider Applicant's untimely opposition, Applicant must move to reopen the time period for opposing the motion to strike, which closed January 16, 2017. Such a motion to reopen must show that Applicant's failure to act during the time allowed therefor was the result of excusable neglect. Applicant has not moved to reopen nor has Applicant shown that its 23-day delay was the result of excusable neglect.

**Applicant Failed to Show Excusable Neglect**

Applicant's opposition is completely silent regarding the reason for Applicant's 23-day delay in opposing the motion to strike. Applicant's delay is unexplained and inexcusable and serves on purpose other than to further delay this proceeding. Opposer's summary judgment was filed November 8, 2016 and since then, Applicant has untimely filed an opposition and cross-motion (which Opposer moved to strike due to untimeliness) and untimely

filed an opposition to the motion to strike. Both of Applicant's oppositions were filed after the expiration of the period allowed therefor and neither opposition was accompanied by a motion to reopen and a showing of excusable neglect.

In Applicant's opposition to the motion to strike, Applicant gives no reason for its 23-day delay in opposing the motion and instead attempts to show excusable neglect for its delay in opposing Opposer's summary judgment motion. While this portion of the opposition is irrelevant to Opposer's motion to strike and therefore should be ignored by the Board, Opposer will briefly respond thereto for completeness of the record.

Applicant makes the specious argument that its opposition to Opposer's summary judgment motion was filed one day late. This is incorrect. Applicant's opposition was filed December 19, 2016, six days late, and Applicant has given no explanation of the reason for this additional delay.

The reason given by Applicant for the one-day delay in filing the Certificate of Service lacks both credibility and factual support. The reason given is that Applicant's attorney's office "mistakenly took this day as one that did not count against the time given to oppose." Using that reasoning, Applicant's attorney's office would likewise not have counted Saturdays and Sundays against the time given to oppose. Applicant's attorney is silent as to his role in both the docketing error and the six-day delay in filing Applicant's opposition to Opposer's summary judgment motion.

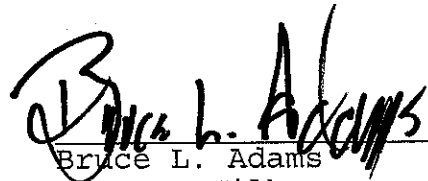
In Pumpkin Ltd. v. The Seed Corps., 43 USPQ2d 1582

(TTAB 1997), the Board adopted the excusable neglect analysis set forth by the Supreme Court in the Pioneer case, finding the second and third Pioneer factors to be the dominant factors in the case before it. With respect to the second Pioneer factor, the Board noted that the length of the delay must take into account the additional, unavoidable delay arising from the time required for briefing and deciding the motion to reopen and the unnecessary and otherwise avoidable delay of the proceeding and expenditure of the Board's resources. With respect to the third Pioneer factor, the Board noted that the reason for the delay was due solely to negligence and inattention. The same is true in this proceeding, and the absence of prejudice and bad faith under the first and fourth Pioneer factors is outweighed by the combination of circumstances under the second and third Pioneer factors.

Applicant has not shown that its failure to timely file its opposition and cross-motion was the result of excusable neglect.

For the foregoing reasons and for the reasons set forth in Opposer's motion to strike, Opposer respectfully requests that no consideration be given to Applicant's untimely filed opposition and Opposer's motion to strike be granted.

ADAMS & WILKS

A handwritten signature in black ink, appearing to read "Bruce L. Adams", is written over a horizontal line.

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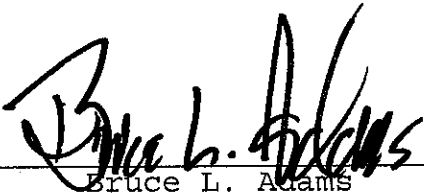
Attorneys for Opposer

Meeshaa Inc.,  
dba Diamond Essence

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing  
OPPOSER'S REPLY TO APPLICANT'S OPPOSITION TO MOTION TO STRIKE in  
Meeshaa Inc., dba Diamond Essence v. Anaya Gems Inc., Opposition  
No. 91219631, has been served on Tal Hirshberg, counsel for  
Applicant, by forwarding said copy on February 20, 2017 via email  
to:

Tal.hirshberg@gmail.com

  
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Bruce L. Adams