UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Alexandria, VA 22313-1451
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May 12, 2020

Opposition No. **91254361**

Kiss Nail Products, Inc.

v.

Nailah Geter

Yong Oh (Richard) Kim, Interlocutory Attorney:

Pursuant to the schedule in the Board's order of February 27, 2020, Applicant was allowed until April 7, 2020, to answer the notice of opposition.[1] On March 25, 2020, Applicant filed a paper styled "Defendents Motions to Dismiss Opposition" [sic] via ESTTA under the designation of an answer.[2] Unclear as to whether a response to the filing was necessary, Opposer, nonetheless, filed a response "out of an abundance of caution…."[3]

Applicant's filing qualifies neither as a motion to dismiss nor an answer. Rather, the filing appears to be in the nature of an overture for settlement. Such offers are

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2 4 TTABVUE. Applicant's filing fails to indicate proof of service on Opposer as required by Trademark Rule 2.119. Nevertheless, the Board, pursuant to its inherent authority to control the disposition of cases on its docket, *see Carrini Inc. v. Carla Carini S.R.L.*, 57 USPQ2d 1067, 1071 (TTAB 2000), has considered the filing in the interest of economy and of minimizing delay. Notwithstanding, strict compliance with Trademark Rule 2.119 is required by Applicant in all future papers filed with the Board.

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more appropriately communicated directly to Opposer's counsel and need not, and should not, be filed with the Board. Accordingly, Applicant's filing and Opposer's response thereto will be given no further consideration.

Dates are **RESET** and Applicant is allowed until **JUNE 11, 2020**, to answer the notice of opposition. If the parties are engaged in, or wish to engage in, settlement discussions, it is recommended that the parties stipulate to a period of suspension to allow for fruitful discussion and file such stipulation with the Board for approval. In the absence of a suspension, dates will continue to run in accordance with the following schedule:

Time to Answer	**6/11/2020**
Deadline for Discovery Conference	**7/11/2020**
Discovery Opens	**7/11/2020**
Initial Disclosures Due	**8/10/2020**
Expert Disclosures Due	**12/8/2020**
Discovery Closes	**1/7/2021**
Plaintiff's Pretrial Disclosures Due	**2/21/2021**
Plaintiff's 30-day Trial Period Ends	**4/7/2021**
Defendant's Pretrial Disclosures Due	**4/22/2021**
Defendant's 30-day Trial Period Ends	**6/6/2021**
Plaintiff's Rebuttal Disclosures Due	**6/21/2021**
Plaintiff's 15-day Rebuttal Period Ends	**7/21/2021**
Plaintiff's Opening Brief Due	**9/19/2021**
Defendant's Brief Due	**10/19/2021**
Plaintiff's Reply Brief Due	**11/3/2021**
Request for Oral Hearing (optional) Due	**11/13/2021**

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, matters

in evidence, the manner and timing of taking testimony, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence.

Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

Pro Se Information

The record does not reflect that Applicant is represented by legal counsel in this proceeding. While Patent and Trademark Rule 11.14(e) permits a party to represent itself, it is generally advisable for a party not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney.

The Trademark Rules of Practice, other federal regulations governing practice before the Patent and Trademark Office, and many of the Federal Rules of Civil Procedure govern the conduct of this proceeding. The Trademark Act, the Trademark Rules of Practice, and the Trademark Trial and Appeal Board Manual of Procedure (TBMP) are all available on the TTAB page of the USPTO website at https://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab. This web page also includes information on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and other relevant topics.

Applicant is reminded that Trademark Rules 2.119(a) and (b), as newly amended, require that, with the exception of the notice of opposition or the petition to cancel, every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party (or adversary), and proof of such service must be made before the paper will be considered by the Board.

"Proof of service" usually consists of a signed, dated statement stating: (1) the nature of the paper being served, (2) the method of service (e.g., email), (3) the person being served and the email address (or physical address if email cannot be utilized) used to effect service, and (4) the date of service. For future reference, a suggested format for the certificate of service is provided below:

> I hereby certify that a true and complete copy of the foregoing (***insert title of submission***) has been served on (***insert name of opposing counsel or party***) by forwarding said copy on (***insert date of mailing***), via email (***or insert other appropriate method of service***) to:
>
> (***set out name and email or physical address of opposing counsel or party***)
>
> _____ _____
> Signature Date

See, e.g., TBMP § 113.

Applicant should further note that any paper she is required to file with the Board should not take the form of a letter; proper format should be utilized. The form of submissions is governed by Trademark Rule 2.126. *See also* TBMP § 106.03.

In particular, "[t]ext in an electronic submission must be filed in at least 11-point type and double-spaced." Trademark Rule 2.126(a)(1). *See* Trademark Rule 2.126(b) for paper submissions.

While it is true that the law favors judgments on the merits wherever possible, it is also true that the Patent and Trademark Office is justified in enforcing its procedural deadlines. *Hewlett-Packard v. Olympus*, 18 USPQ2d 1710 (Fed. Cir. 1991). In that regard, the parties should note that any paper they are required to file herein must be received by the Board by the due date, unless one of the filing procedures set forth in Trademark Rules 2.197 and 2.198 is utilized for paper submissions.

In submitting an answer, Applicant is referred to Rule 8(b) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Trademark Rule 2.116(a). Fed. R. Civ. P. 8(b) provides:

> (b) **Defenses; Admissions and Denials**
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> (1) ***In General***. In responding to a pleading, a party must:
>
> (A) state in short and plain terms its defenses to each claim asserted against it; and
>
> (B) admit or deny the allegations asserted against it by an opposing party.
>
> (2) ***Denials – Responding to the Substance***. A denial must fairly respond to the substance of the allegation.
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> (3) ***General and Specific Denials***. A party that intends in good faith to deny all the allegations of a pleading – including the jurisdictional grounds – may do so by a general denial. A party that does not intend to deny all the allegations must either specifically deny designated allegations or generally deny all except those specifically admitted.
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> (4) ***Denying Part of an Allegation***. A party that intends in good faith to deny only part of an allegation must admit the part that is true and deny the rest.

(5) ***Lacking Knowledge or Information***. A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation must so state, and the statement has the effect of a denial.

(6) ***Effect of Failing to Deny***. An allegation – other than one relating to the amount of damages – is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation is considered denied or avoided.

The notice of opposition filed by Opposer herein consists of **24** numbered paragraphs setting forth the basis of Opposer's claim of damage, and a prayer for relief. In accordance with Fed. R. Civ. P. 8(b), it is incumbent on Applicant to answer the notice of opposition by admitting or denying the allegations contained in each paragraph. If Applicant is without sufficient knowledge or information on which to form a belief as to the truth of any one of the allegations, she should so state and this will have the effect of a denial.

Files of TTAB proceedings can be examined using TTABVUE, accessible at http://ttabvue.uspto.gov/ttabvue. After entering the 8-digit proceeding number, click on any entry in the prosecution history to view that paper in PDF format.

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