

TTAB

Michael B. Adlin, Esq.
Interlocutory Attorney
United States Patent and Trademark Office
Trademark Trial and Appeal Board
POB 1451
Alexandria, VA 22313-1451

Re: Cancellation No. 92050296, Altadis U.S.A. Inc v. Wentworth E. Miller

Response to Petitioner Motion of 2/12/10 to Strike Registrant's Brief as Untimely Filed

Dear Sir, Madam, Whomever it May Concern:

Registrant herein, while admitted to practice law some decades ago, has not engaged in the practice of law for many years, and never practiced trademark and patent law. Registrant is *pro se* in this proceeding, and as such, suspects and appreciates that this Board and the attorney and support personnel charged with oversight and shepherding of this matter have doubtless extended Registrant extraordinary leeway.

As Petitioner's lawyers seek to end run around the salient circumstance, aptly demonstrated and supported in Registrant's Brief submitted in opposition to Petitioner's Motion for Summary Judgment herein, and Registrant's Cross Motion for Summary Judgment herein, that their trademark, being eminently of a merely descriptive and common nature, is undeserving of *any* protection under the trademark laws, and moreover there is not the least likelihood of confusion between Registrant's and Petitioner's respective marks in any event, Registrant must once again request such leeway as seems fair and instrumental in the pursuit of a proper and just resolution of this matter.

Registrant reads the instructions of December 16, 2009 sent to the parties as properly chastising of Registrant's piecemeal and at times untimely submission of documents and papers herein. However, while it was instructed that Respondent "may not supplement his response and cross-motion," it was nonetheless noted that "Respondent's reply brief in support of his cross-motion is due."

Petitioner may well point to particulars of Trademark Rule 2.127(e)(1) to demonstrate that Respondent's Brief and Memorandum of Law was filed outside the strictures of said Rule. Indeed, Petitioner would have Respondent make such filing within 15 days, notwithstanding that said 15 day period, Dec. 15-29, fell squarely within the run-up to Christmas and New Year's.

Such is the legal infirmity of Petitioner's position that, Scroogelike, Petitioner would require a response from Respondent during a period when he might well have been away, not to mention otherwise engaged and distracted.

Would that Respondent, as Petitioner's lawyers, had the luxury of billing hours at a handsome fee while endeavoring to meet the constraints for timely filing and response, and had nothing more to do than do battle with a Goliath attempting to bulldoze potential competitors by means of tying them up in litigation. But Respondent is a sole proprietor with a business to run, who must yet find additional, uncompensated time to joust with Petitioner.

While Respondent appreciates the purpose of and need for timetables and rules of engagement, we are well past the time when justice genuflected to niceties of wording and protocol.

Petitioner's eleventh hour attempt to deprive this Board of the benefit of Respondent's marshaling of pertinent facts and appropriate legal guidelines and arguments herein should be seen as nothing more than a desperate ploy. Petitioner offers no showing of harm or disadvantage owing to the admittedly tardy filing of Respondent's Memorandum of Law. Indeed, Petitioner does not



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seek leave or extension in which to file additional legal arguments.

Petitioner's position is simply, "Don't look at his arguments, because technically he is late."

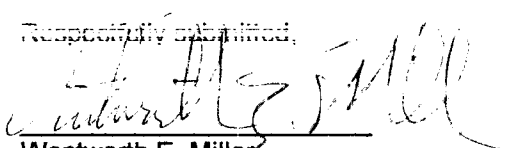
Respondent cannot imagine that this Board, doubtless overwhelmed by the tide of trademark litigation initiated by corporate interests as a competitive business tactic, will add to this tide by deferring to the decision of a federal appellate court, whether Respondent's legal position and arguments should have been considered prior to adjudication of the herein matter.

Of course they should. Justice, equity, and common sense so dictate.

Therefore, Respondent respectfully requests that Petitioner's instant Motion be summarily denied.

Dated: February 19, 2010

Respectfully submitted,


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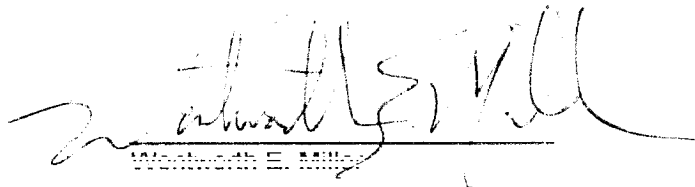
CERTIFICATE OF SERVICE AND FILING

The undersigned hereby certifies that a copy of Respondent's Letter in response to Petitioner's Motion to Strike Untimely Filed Brief of Respondent was served on the Petitioner/Correspondent of Record on the date indicated below by depositing the same with U.S. Postal Service, First Class Mail, postage prepaid to:

Susan M. Schlessinger, Esq.
Grimes and Battersby, LLP
488 Main Avenue
Norwalk, CT 06851

and further certifies that the aforementioned Letter in response to Petitioner's Motion to Strike Untimely Filed Brief of Respondent was filed with the Trademark Trial and Appeal Board on the date indicated below by depositing the same with U.S. Postal Service, First Class Mail, postage prepaid to said department of the United States Patent and Trademark Office,
Attn: Michael B. Adlin, Esq. at POB 1451, Alexandria, VA 22313-1451

Dated: February 19, 2010



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