

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

ORBIS DISTRIBUTION, INC.)	
)	
Plaintiff,)	
)	Cancellation No. 92057500
v.)	
)	Reg. No. 3197276
BEE NATURALS, INC.)	
)	
Defendant.)	

**DEFENDANT’S REPLY IN SUPPORT OF ITS MOTION
TO ACCORD A FILING DATE**

Comes now Defendant Bee Naturals, Inc. through undersigned counsel and submits this paper in support of its Motion to Accord a Filing Date.

Plaintiff makes several arguments in its opposition to Defendant’s Motion to Accord a Filing Date. Each will be addressed below.

First, Plaintiff argues that the absence of a listing for a response to Plaintiff’s Motion for Default Judgment in the TTAB’s online filing system should have noticed by Defendant on September 20th, when Defendant filed its Answer. The undersigned counsel is not aware whether the paralegal filing the Answer would have known that an Opposition to Motion for Default Judgment should have been listed or whether a pleading mailed on September 11 would always be listed in the TTABVUE system by September 20, but the point is moot because to the undersigned’s knowledge, the ESTTA filing system (which is separate from the TTABVUE system for viewing pleadings) does not provide a listing of other motions and oppositions. Therefore, it is not necessarily true that the paralegal filing the Answer on September 20 ever saw a listing of pleading from which the absence of the Opposition to Motion for Default Judgment could have been noticed.

Second, Plaintiff's assertion that a Response to Motion for Default was not actually mailed because Defendant has filed other pleadings through the ESTTA system is also unavailing. When a pleading is handled by a secretary or another party in Defendant's counsel's firm, it is more commonly mailed since those parties are not as familiar with the ESTTA system. Pleadings are frequently filed on ESTTA when a paralegal performs the action. Defendant's counsel does not exclusively use one system or the other.

Third, Plaintiff's assertion that a service copy was not received by it is curious. Taking Plaintiff at his word that a copy was not received, Defendant can only surmise that something happened while being taken, or shortly after being delivered, to the post office. However, it is impossible for Plaintiff to know why the envelope(s) were not delivered.

Though Plaintiff accuses Defendant of deceit, it further claims that Defendant should have checked online to determine whether the mailing was received at the TTAB and scanned in to the record. Defendant submits that in the past there has been no problem with mailings to the TTAB and that the rules incur no such burden on a party.

Finally, Plaintiff makes a strange argument that a copy of the Response to the Motion for Default Judgment was received in the same envelope as the Motion to Accord a Filing Date when served upon him. Though it is unclear what the argument is trying to prove, the reason is that the Response to the Motion for Default Judgment was an exhibit to the Motion to Accord a Filing Date. It would be quite difficult for the Board to accord a filing date to a pleading that was not also submitted.

In view of the foregoing, Defendant submits that its motion should be granted.

Respectfully Submitted,

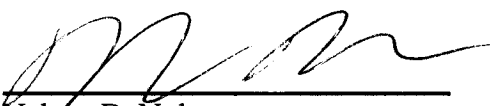
By: 

Nelson D. Nolte, Reg. No. 42,938
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St. Louis, Missouri 63131
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(314) 238-2401 Fax
Attorneys for Defendant BEE NATURALS, INC.

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of Motion for Extension of Time is being served via first class U.S. mail, postage pre-paid this 2nd day of December 2013 upon the following:

John M Bolger
Bolger Legal Group LLC
P.O. Box 170616
Whitefish Bay, WI 53217
Attorney for Plaintiff


Nelson D. Nolte

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to ATTN: Trademark Trial and Appeal Board, Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451 on December 2, 2013.


Nelson D. Nolte

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ORBIS DISTRIBUTION, INC.)	
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)	Cancellation No. 92057500
v.)	
)	Reg. No. 3197276
BEE NATURALS, INC.)	
)	
Defendant.)	

**DEFENDANT’S RESPONSE TO PLAINTIFF’S MOTION
TO STRIKE OF NOVEMBER 12, 2013**

Comes now Defendant Bee Naturals, Inc. through undersigned counsel and submits this paper as its response to Plaintiff’s “Motion To Strike The Defendant’s Papers Titled Motion To Accord A Filing Date, Response To Motion For Default Judgment, And Response To Motion To Strike.”

Motions to strike are not favored, and matter will not be stricken unless it clearly has no bearing upon the issues under litigation. *See, e.g., FRA S.p.A. v. Surg-O-Flex of America, Inc.*, 194 USPQ 42, 46 (SDNY 1976); *Leon Shaffer Golnick Advertising, Inc. v. William G. Pendil Marketing Co., Inc.*, 177 USPQ 401, 402 (TTAB 1977).

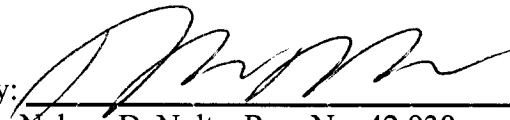
Disregarding this case law, Plaintiff in the proceeding has filed motions to strike nearly every pleading filed by Defendant. In every instance, Plaintiff’s the motions to strike represent no more than arguments why a motion should be granted or denied and are largely redundant of Plaintiff’s motion or opposition on the same issue.

The present motion to strike is no different. Plaintiff has filed both a response to Defendant’s Motion to Accord a Filing Date and also the present “Motion To Strike The Defendant’s Papers Titled Motion To Accord A Filing Date, Response To Motion For Default

Judgment, And Response To Motion To Strike.”. Plaintiff’s motion to strike merely repeats its reasons for opposition to Defendant’s pleadings. That the Plaintiff believes a motion is not grantable is clearly not a valid basis to strike a pleading from the record. Therefore, the motion to strike should be denied.

Respectfully Submitted,

By:

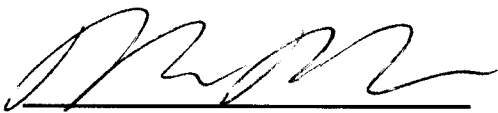


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