

ESTTA Tracking number: **ESTTA828037**

Filing date: **06/19/2017**

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

Proceeding	92065883
Party	Plaintiff Joseph Valenti
Correspondence Address	PHILLIP THOMAS HORTON 47 SCHOOL STREET PEMBROKE, MA 02359 UNITED STATES Email: NEROLitigation@gmail.com
Submission	Motion to Dismiss - Rule 12(b)
Filer's Name	Phillip Thomas Horton
Filer's email	NEROLitigation@gmail.com
Signature	/Phillip Thomas Horton/
Date	06/19/2017
Attachments	NERO NERO DIMISS for insufficient service.pdf(227523 bytes)

1 Filing System (ESTTA). On May 29, 2017, Defendant, acting through its
2 attorney Jovanna Bearden of Bearden Law, filed the Motion. The only
3 Certificate of Service in the filing is at the end of the ESTTA form, and states “a
4 true and correct copy of the foregoing document was filed with the Trademark
5 Trail and Appeal Board via the Electronic System for Trademark Trials and
6 Appeals and set by email to Counsel for Plaintiff, Phillip Thomas Horton at
7 NEROLitigation@gmail.com.”

8 While Defendant’s Certificate of Service states that she “sent by email to
9 Counsel for Plaintiff, Phillip Thomas Horton at NEROLitigation@gmail.com,”
10 Petitioner’s counsel never received a service copy of the Motion at the indicated
11 email address.

12 **ARGUMENT**

13 Defendant failed to adequately and effectively serve the Motion on
14 Petitioner. Accordingly, the Motion should be dismissed.

15 Specifically, § 113.04 provides, in pertinent part, “(s)ervice of
16 submissions filed with the board or any paper served on a party not required to
17 be filed with the Board, must be made by email, unless otherwise stipulated...”
18 However, affixing proof of service to the document without actually effecting
19 service in accordance with the rules is insufficient. *See Springfield Inc. v. XD*,
20 86 USPQ2d at 1063 (“Proof of service is meaningless in the absence of actual
21 service in accordance with the statements contained in the proof of service.”).

22 Trademark Rule of Practice 2.111(b) provides further, in pertinent part,
23 “(s)ervice of submissions filed with the Board and any other papers served on a
24 party not required to be filed with the Board, must be on the attorney or other
25 authorized representative of the party if there be such ... and must be made by
26 email, unless otherwise stipulated...”
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CERTIFICATE OF SERVICE

I, Phillip Thomas Horton, Esq., certify that on this 19th day of June, 2017, a true and correct copy of the foregoing document was filed with the Trademark Trial and Appeal Board via the Electronic System for Trademark Trials and Appeals and was sent via email to:

Jovanna R. Bearden
Bearden Law
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E: Jovannabearden@gmail.com

By: /Phillip Thomas Horton/
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Attorney for Petitioner