

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: January 29, 2009

Opposition No. **91156265**

The Mad Potter, Inc.

v.

Mad Potter, Inc., The

Linda Skoro, Interlocutory Attorney

On October 14, 2008, the parties filed applicant's proposed amendment to its application Serial No. 76000433, with opposer's consent, and opposer's withdrawal without prejudice of the opposition, contingent upon entry of an amendment wherein applicant seeks to change its application to one seeking concurrent use.

In the instant case, applicant has sought registration of and claims exclusive right to use the mark THE MAD POTTER for "entertainment in the nature of pottery firing for parties and special events" in the area comprising all states in the United States except Kentucky. Applicant has recited as an exception to its claim of exclusive use of said mark, use by The Mad Potter, LLC, opposer herein, of the mark THE MAD POTTER for "paint your own pottery and potter firing services for individuals, parties and special events" for the area of the State of Kentucky.

Inas much as opposer has consented thereto, the motion to amend applicant's geographically unrestricted application to one for a concurrent use registration is granted the amendment is entered. See Trademark Rule 2.127(a).

In view thereof, Opposition No. 91156265 is dismissed without prejudice, and a concurrent use proceeding, namely, **Concurrent Use No. 94002379**, is hereby instituted under the provisions of Section 2(d) of the Trademark Act of 1946. This concurrent use proceeding involves the following parties.

Name of applicant	:	The Mad Potter, Inc.
Applicant's address	:	1963-A West Gray Houston, Texas 77019
Applicant's mark	:	THE MAD POTTER
Serial No.	:	76000433
Goods or Services	:	entertainment in the nature of Pottery firing for parties and Special events
Filing date	:	March 15, 2000
Territory of use	:	for the area comprising all states in the United States except Kentucky
Attorneys	:	John Courtney Andrews & Kurth, LLP 600 Travis, Suite 4200 Houston, Texas 77002-3090
Name of User	:	The Mad Potter, LLC
Service mark	:	THE MAD POTTER
Goods or services	:	paint your own pottery and pttery firing services for individuals, parties and social events
Territory of use	:	the state of Kentucky

Attorney : John Scruton
Stites & Harbision
400 West Market Street
Suite 1800
Louisville, KY 40202-3352

The proceeding will be conducted in accordance with the Trademark Rules of Practice. Trademark Rule 2.99, under which this notice is given, provides that:

An answer to the notice is not required in the case of an applicant or registrant whose application or registration is specified as a concurrent user in the application, but a statement if desired, may be filed within forty days after the mailing of the notice; in the case of any other party specified as a concurrent user in the application, an answer just be filed within forty days after the mailing of the notice.

Accordingly, The Mad Potter, LLC has forty days from the mailing date of this order to file its answer in accordance with Trademark Rule 2.99. The answer should be directed to the allegations relating to concurrent use recited in the application identified herein. If an answer is not filed, then the proceeding may be handled as in a case of default. See Trademark Rule 2.99(d)(3). Trial dates are set as provided below:

Discovery period to close: **July 28, 2009**
Thirty-day testimony period for party in position of plaintiff to close: **October 26, 2009**
Thirty-day testimony period for party in position of defendant to close: **December 25, 2009**
Fifteen-day rebuttal testimony period to close: **February 8, 2010**

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits must be served on

the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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NEWS FROM THE TTAB:

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:

<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>

http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>