

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

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Mailed: March 28, 2002

Opposition No. 107,026

Opposition No. 107,748

Kevin T. McCarney, d/b/a
Poquito Mas

v.

Una Mas, Inc. and Una Mas
Restaurants Incorporated,
joined as a defendant

Albert Zervas, Interlocutory Attorney

This case now comes up on opposer's motion (filed January 28, 2002) to strike applicant's responses (dated January 24, 2002) to opposer's first set of requests for admission (bearing a certificate of service dated June 1, 1998). The motion has been fully briefed by the parties.¹ For purposes of this order, the Board presumes familiarity with each party's arguments and evidence.

The record reflects that the Board suspended proceedings for six months, commencing on March 27, 1998. In the March 27, 1998 suspension order, the Board stated

¹ The Board has exercised its discretion and has considered opposer's reply (filed February 27, 2002). See Trademark Rule 2.127(a). Also, because the Board has not received an objection

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that suspension was "subject to the right of either party to request resumption at any time" Because the Board had not received a request to resume proceedings prior to June 1, 1998, i.e., the date on which opposer mailed its requests for admission to applicant, the Board concludes that opposer mailed its requests to opposer while the case was under suspension. It therefore was applicant's prerogative to choose to consider the requests as untimely, thereby requiring no response. Applicant's attorney did so and informed opposer's attorney of the same in his letter dated June 22, 1998.² See Exhibit 2 to the declaration of Christine P. Peters, filed together with applicant's response to the motion to strike.³

Thus, in view of the foregoing, the Board thus finds that applicant's responses (served January 24, 2002) to

to opposer's surreply (filed March 4, 2002), the Board has considered opposer's surreply.

² Opposer maintains in its reply brief (filed February 27, 2002) that there was a "mutual agreement that these proceedings should be continued" after the Board's March 27, 1998 order. Applicant denies that there was "any express or implied 'mutual agreement,'" but maintains that "Opposer voluntarily chose to respond to Applicant's discovery requests [and that opposer responding] did not create any mutual obligation on Applicant to do the same." Because opposer has not produced any evidence of a "mutual agreement" and because applicant contests that there was a "mutual agreement," the Board does not find that there was a "mutual agreement," as contended by opposer.

³ Applicant's attorney suggested to opposer's attorney in the same letter that the parties "stipulate to a proposed reopening of discovery and time of response" to the requests for admission, which would be filed with the Board. Evidently, opposer's attorney failed to follow up on applicant's attorney's suggestion.

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opposer's first requests for admission are timely, and denies opposer's motion to strike.

Trial dates remain as set in the Board's order mailed on November 9, 2001.