

TTAB

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



02-11-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #26

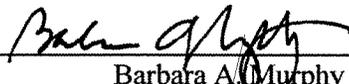
RaceTrac Petroleum, Opposer

v.

ETW Corporation, Applicant

Opposition No. 117,623

I hereby certify that this paper is being deposited with the U.S. Postal Service as first class mail, postage prepaid, in an envelope addressed to Box TTAB No Fee, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513 on the date shown below.



Barbara A. Murphy
2/10/2003

February 10, 2003

APPLICANT'S OPPOSITION TO MOTION TO COMPEL

Applicant ETW Corporation hereby opposes the motion of Opposer RaceTrac Petroleum, Inc. to compel responses to discovery. Opposer's motion falls outside the period permitted for filing a motion to compel and should be denied for that reason.

Motions to compel discovery must be filed prior to the commencement of the first testimony period, which began in February 2002. Opposer's motion to compel was filed in January 2003, after the completion of the first testimony period. To permit a motion to compel at this time would be in direct contradiction with the rules of opposition proceedings.

Opposer's Motion seeks to compel both interrogatories and requests for documents. Until the instant motion, however, Applicant was not served with interrogatories, but only requests for documents. Applicant was served separately with two discovery requests from Opposer, but they were identical requests for production of documents, no interrogatories. For this reason as

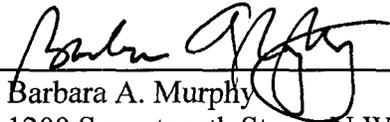
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Mark: RACEWAY & Design
Serial No. 75/321,745

well, any motion to compel answers to discovery served after the close of the discovery period should be denied.

For the foregoing reasons, Applicant respectfully requests that the Motion to Compel be denied.

Respectfully submitted,

Adduci, Mastriani & Schaumberg, L.L.P.

By: 
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Attorney for Applicant
ETW Corporation

Dated: February 10, 2003
ETW700203

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S OPPOSITION TO MOTION TO COMPEL was served as indicated below, February 10, 2003, on the party listed below:

Racetrac Petroleum, Inc.

Joan L. Dillon, Esq.
Joan Dillon Law, LLC
3530 Ashford Dunwoody Road, PMB 235
Atlanta, Georgia 30319

- U.S. Mail Postage Prepaid
- Hand Delivered
- Federal Express
- Facsimile



ADDUCI, MASTRIANI & SCHAUMBERG, L.L.P.
1200 Seventeenth Street, N.W.
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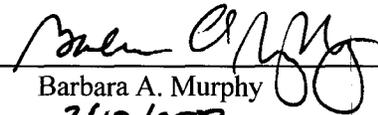
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Barbara A. Murphy

2/10/2003

February 10, 2003

APPLICANT'S MOTION TO EXTEND THE TESTIMONY PERIOD

Applicant ETW Corporation hereby moves to extend the testimony period for Applicant and the rebuttal testimony period of Opposer RaceTrac Petroleum, Inc. Pursuant to prior requests to extend the schedule, Applicant's testimony period is scheduled to close on February 10, 2003. Applicant requests that this period be extended by one month until March 10, 2003. Applicant submits that good cause exists for this extension because of personal commitments and ongoing and unanticipated scheduling conflicts that have arisen in other matters that have prevented counsel for Applicant from completing the necessary testimony during the assigned period. Applicant submits that this extension would not unnecessarily delay the proceedings in this matter and would allow the testimony period to be completed.

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Resetting of the dates is respectfully requested. If granted, this would reschedule times as follows:

	<u>Present Date:</u>	<u>New Date:</u>
30-day Testimony period for party in position of defendant to close (opening thirty (30) days prior thereto)	February 10, 2003	March 10, 2003
15-day Rebuttal Testimony period to close (opening fifteen (15) days prior thereto)	March 28, 2003	April 28, 2003

Based on the Opposer's opposition to Applicant's most recent request, Opposer will oppose this extension. Applicant submits, however, that a final one-month extension in this matter would not prejudice the Opposer, whose registrations are in full force and effect, despite the pendency of this proceeding. Opposer indicated in its opposition that the Board had previously indicated such an extension would not be granted. Counsel for Applicant, having reviewed its own records for receipt of such documents, indicates that it has not received such an order from the Board. Applicant is not in any way attempting to flaunt the Board's order. Applicant's extension request should not be denied on this basis, as Applicant should not be penalized for not having received such order.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing APPLICANT'S MOTION TO EXTEND THE TESTIMONY PERIOD was served as indicated below, February 10, 2003, on the party listed below:

Racetrac Petroleum, Inc.

Joan L. Dillon, Esq.
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