

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

MAILED

JAN 23 2003

PAT. & T.M. OFFICE

Opposition No. 123,805

RKO Pictures, Inc.

v.

RKO Century Warner Theatres, Inc.

Nancy L. Omelko, Interlocutory Attorney:

Respondent's "motion (filed August 31, 2001) to strike" the notice of opposition is well taken only to the extent that this opposition should be dismissed in favor of the concurrent use proceeding at the appropriate time. All rights, including estoppel by contract, can be asserted as defenses in the concurrent use proceeding.

Respondent's motion (filed October 1, 2001) to suspend proceedings is moot inasmuch as the filing of respondent's "motion to strike" served to suspend proceedings herein under Trademark Rule 2.127(d) because the motion is potentially dispositive of the case.

Applicant is allowed **thirty days** from the mailing date of this order to explain the relationship between RKO Century Warner Theatres, Inc., the defendant herein, and Loews Cineplex Entertainment Corporation, the plaintiff in Opposition No. 125,220.

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Proceedings remain otherwise suspended pending the disposition of Opposition No. 120,565¹ and 125,220².

In response to applicant's letter filed October 7, 2002 regarding the possible need to reconstruct the application file for Serial No. 76/386,638, please be advised that that application has been found. The Board regrets the delay in acting on this motion.

¹ This opposition involves application serial no. 75/386,638, the application involved in this proceeding.

² This opposition is currently suspended for settlement negotiations.