

TTAB



06-20-2003

U.S. Patent & TMOtc/TM Mail Rcpt Dt. #73

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

In the Matter of Serial No. 76/155,723 for the mark KERMIT  
Published in the Official Gazette on July 31, 2001  
Opposer's Ref.: HEN USA TC-01/06537

-----X  
THE JIM HENSON COMPANY, INC., :  
Opposer, :  
- against - :  
PEDRO TELLERIA SOPENA, :  
Applicant. :  
-----X

Opposition No. 151,872

BOX TTAB  
NO FEE

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OPPOSER'S MOTION FOR A DEFAULT JUDGMENT

Opposer, The Jim Henson Company, Inc. ("Henson") by its counsel hereby  
moves, pursuant to Rule 37 of the Federal Rules of Civil Procedure and Rule 2.120(g) of  
the Trademark Rules of Practice, for an order rendering a judgment by default against  
Applicant Pedro Telleria Sopena refusing registration of Application S.N. 76/155,723 and  
sustaining the opposition.

FACTS

On January 16, 2003, pursuant to 37 C.F.R. § 2.120(e) and Fed.R.Civ.P. Rule 37,  
Opposer moved to compel Applicant to provide proper written responses to Opposer's  
First Set of Interrogatories and First Requests for Production of Documents and Things  
("Opposer's Discovery Requests"), to produce the documents and things called for by the

"Express Mail" mailing label No. EV220079053US	Date of Deposit June 18, 2003
I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.	
Robert A. Becker (Printed name of person mailing paper or fee)	 (Signature)

Requests for Production of Documents and Things included in Opposer's Discovery Requests, and to provide Opposer with an opportunity to inspect and copy such documents and things, following Applicant's failure to do so. Applicant did not respond to Opposer's motion.

On May 9, 2003, the Trademark Trial and Appeal Board granted Opposer's motion to compel as "conceded" pursuant to 37 C.F.R. § 2.127(a), ordered Applicant to submit his responses, without objection, to Opposer's Discovery Requests by June 9, 2003, and stated that if Applicant failed to do so, Opposer's remedy would be a motion for judgment pursuant to Trademark Rule 2.120(g).

As of the date of this motion, which is subsequent to the June 9, 2003 deadline set by the Board, Applicant has not provided responses to Opposer's Discovery Requests, as ordered by the Board.

#### ARGUMENT

#### **OPPOSER IS ENTITLED TO ENTRY OF AN ORDER OF JUDGMENT BECAUSE APPLICANT HAS FAILED TO COMPLY WITH THE BOARD'S ORDER COMPELLING IT TO PROVIDE PROPER RESPONSES TO OPPOSER'S DISCOVERY REQUESTS.**

Under 37 C.F.R. §2.120(g)(1), "[i]f a party fails to comply with an order of the Trademark Trial and Appeal Board relating to discovery . . . the Board may make an appropriate order, including any of the orders provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure." Thus, here, where Applicant failed to comply with the Board's Order compelling it to produce proper discovery responses, the Board may enter judgment by default against Applicant, sustain the opposition, and refuse registration of the application. Caterpillar Tractor Co. v. Catfish Anglers Together, Inc., 194 U.S.P.Q. 99, 100 (T.T.A.B. 1977). See also Unicut Corp. v. Unicut, Inc., 222 U.S.P.Q. 341, 344

(T.T.A.B. 1984) (Board entered judgment for petitioner and granted cancellation of the registration at issue when petitioner had been unable to obtain discovery depositions and documents from respondent despite previous motions to compel and motions for sanctions).

Indeed, here, the Board invited Opposer to make such a motion if Applicant failed to comply with the Board's order.

CONCLUSION

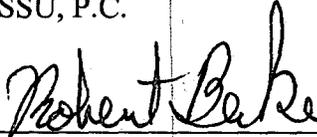
Accordingly, for the foregoing reasons, Opposer respectfully requests that judgment be entered against Applicant sustaining this opposition and refusing registration of Application Serial No. 76/155,723.

This Opposer's Motion for a Default Judgment is filed in triplicate.

Dated: New York, New York  
June 18, 2003

Respectfully submitted,

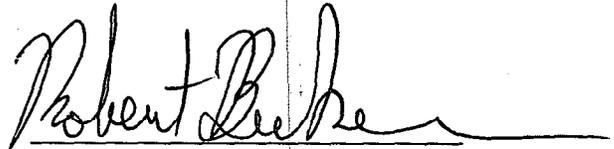
FROSS ZELNICK LEHRMAN  
& ZISSU, P.C.

By:   
Robert A. Becker

Attorneys for Opposer  
866 United Nations Plaza  
New York, New York 10017  
(212) 813-5900

CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of OPPOSER'S MOTION FOR A  
DEFAULT JUDGMENT to be served by prepaid, first-class mail on this 18<sup>th</sup> day of  
June, 2003 upon Thomas W. Brooke, Esq., Holland & Knight LLP, Suite 100, 2099  
Pennsylvania Avenue, NW, Washington, DC 20037.

A handwritten signature in black ink, appearing to read "Robert A. Becker", written over a horizontal line.

Robert A. Becker

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