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

In re: Applications Serial Nos. 76/295,724
Filed: August 6, 2001
For the Mark **BLUEMAN**
Published in the Official Gazette on August 20, 2002

BLUE MAN PRODUCTIONS, INC.,

Opposer,

v.

ERICH TARMANN,

Applicant.

NOTICE OF OPPOSITION

02 DEC 17 AM 9:30
TTAB TRIAL AND APPEAL BOARD

Box TTAB FEE
Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513

Opposer, Blue Man Productions, Inc., a New York corporation having a place of business at 434 Lafayette Street, New York, New York 10003 ("Opposer"), believes that it will be damaged by registration of the mark BLUEMAN for the goods shown in application Serial No. 76/295,724, and having been granted extensions of time to oppose up to and including December 18, 2002, hereby opposes same.

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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 C.F.R. 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 on

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(Date of Deposit)

Reborah A. O'Hara

(Typed or printed name of person mailing paper or fee)

Reborah A. O'Hara

(Signature)

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As grounds for opposition, it is alleged that:

1. Opposer is the owner of the renowned mark BLUE MAN GROUP in the United States.
2. Since prior to March 6, 2000, Applicant's claimed first use date, Opposer has used the BLUE MAN GROUP mark in connection with a wide variety of goods and services including entertainment services in the nature of live musical and theatrical performances, magnets, postcards, posters, hats, caps, t-shirts, sweatshirts, jackets, mugs, watches, pins, musical sound recordings and prerecorded videos throughout the United States.
3. Opposer is the owner of the following federal registrations:

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Goods/Services</u>
BLUE MAN GROUP	2,450,660	5/15/01	Entertainment services in the nature of live musical and theatrical performances
BLUE MAN GROUP	2,438,222	3/27/01	Gift items, namely, decorative magnets; paper goods, namely, postcards and posters; apparel, namely, hats, t-shirts, sweatshirts
BLUE MAN GROUP	2,617,550	9/10/02	Musical sound recordings

Additionally, Opposer owns pending applications for the BLUE MAN GROUP mark, namely, Application Serial No. 76/385,635 for mugs, Application Serial No. 76/385,636 for watches and ornamental pins, Application Serial No. 76/385,637 for clothing, namely, jackets and caps, and Application Serial No. 76/385,638 for prerecorded videos.

4. Commencing long prior to March 6, 2000, Applicant's claimed first use date, Opposer has extensively promoted and advertised the sale of goods and services using its BLUE MAN GROUP mark, and has sold such goods and rendered such services in commerce in the United States.

5. As a result of the extensive sales and promotion of its goods and services using its BLUE MAN GROUP mark, Opposer has built up highly valuable goodwill for its BLUE MAN GROUP mark, and has built a reputation for excellence and high quality. Opposer's advertising and promotional efforts have brought the BLUE MAN GROUP mark high recognition and visibility among consumers.

6. The BLUE MAN GROUP mark has been widely used by Opposer, the press and the public to identify Opposer and its products and services. Widespread recognition of the BLUE MAN GROUP mark has thereby been achieved. Based on this use and widespread fame, the BLUE MAN GROUP mark has become closely and uniquely identified and associated with Opposer.

7. On August 6, 2001, Applicant Erich Tarmann filed an application to register BLUEMAN for "tobacco, smokers' articles, namely cigarettes" (Application Serial No. 76/295,724).

8. Upon information and belief, Applicant was aware of the BLUE MAN GROUP mark and has selected BLUEMAN as a mark in order to exploit the national goodwill of the BLUE MAN GROUP mark.

9. The goods covered by the Application are closely related to Opposer's goods and services associated with its BLUE MAN GROUP mark.

10. Applicant's BLUEMAN mark so resembles Opposer's BLUE MAN GROUP mark, so as to be likely, when applied to Applicant's goods, to cause confusion, to cause mistake, and to deceive because the public is likely to believe that Applicant's goods have their origin with Opposer and/or that such goods are approved, endorsed or sponsored by

Opposer or associated in some way with Opposer. Opposer would thereby be injured by the granting to Applicant certificates of registration for Applicant's BLUEMAN mark.

11. The BLUE MAN GROUP mark is both famous and distinctive, and was so prior to March 6, 2000, Applicant's claimed first use date. Due to the national repute of the BLUE MAN GROUP mark, Applicant's BLUEMAN mark will dilute the distinctive quality of the BLUE MAN GROUP mark.

12. Opposer would be injured by the granting of such registration because it may tend to damage Opposer's valuable goodwill and reputation for excellence and high quality in the BLUE MAN GROUP mark.

13. Opposer would be further injured by the granting of a certificate of registration because Applicant's mark is nearly identical to Opposer's BLUE MAN GROUP mark, and Applicant's BLUEMAN mark would falsely suggest a connection between Applicant's mark and Opposer.

WHEREFORE, Opposer believes that it will be damaged by registration of Applicant's mark and prays that the opposition be sustained and said registration be denied.

Please recognize as attorneys for Opposer in this proceeding Robert W. Clarida (member of the bar of the State of New York) and the firm Cowan, Liebowitz & Latman, P.C., 1133 Avenue of the Americas, New York, New York 10036.

Please address all communications to Robert W. Clarida, Esq. at the address listed below.

Dated: New York, New York
December 3, 2002

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for the Opposer

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